



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials
Safety Administration**

Office of the
Chief Counsel

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***Hazardous Materials Safety
Law Division***

NOTICE OF PROBABLE VIOLATION

PHMSA Case No. 05-0436-SD-CE Date Issued: OCT - 7 2005

Docket No. PHMSA-2005-22699 - 1

Respondent: Four Seasons Paint Manufacturing Company
5700 NW 38th Street
Lincoln, NE 68524
ATTN: Mr. Ron Baker, President

No. of Alleged Violations: 3

Maximum Possible Assessment: \$97,500

Total Proposed Assessment: \$8,150

The Office of the Chief Counsel of the Pipeline and Hazardous Materials Safety Administration (PHMSA) alleges that you (the Respondent named above) violated certain provisions of the Federal Hazardous Materials Transportation Law, 49 U.S.C. § 5101 et seq., and/or the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171 - 180. PHMSA sets forth the specific allegations in Addendum A to this Notice.

What is the maximum and minimum civil penalty that PHMSA can assess? Federal law sets a civil penalty of not more than \$32,500 and no less than \$275 for each violation occurring before August 10, 2005 but after October 1, 2003 (49 U.S.C. § 5123(a)(1)). Each day of a continuing violation constitutes a separate violation for which the maximum penalty may be imposed (49 U.S.C. § 5123(a)(4)).

What factors does PHMSA consider when proposing and assessing a civil penalty? Federal law requires PHMSA to consider certain factors when proposing and assessing a civil penalty for a violation of Federal Hazardous Materials Transportation Law or the HMR. Please refer to Addendum B to this Notice for more information concerning these factors.

When is my response due? You must respond within thirty (30) days from the date that you receive the Notice (49 C.F.R. § 107.313(a)). **PHMSA encourages you to submit your response by e-mail or fax** when possible. PHMSA may extend the 30-day period for your response if you ask for an extension, and show good cause, within the original 30-day period (49 C.F.R. §107.313(c)). Please contact the undersigned attorney if you have any questions.

What are my response options? You may respond to this Notice in any of three ways:

- (1) Admit the alleged violations and pay the proposed assessment (49 C.F.R. § 107.313(a)(1));
- (2) Send an informal response, which can include a request for an informal conference (49 C.F.R. § 107.313(a)(2)); or
- (3) Request a formal hearing (49 C.F.R. § 107.313(a)(3)).

PHMSA provides information on these options in Addendum B to this Notice and the Office of the Chief Counsel's homepage (<http://rspa-atty.dot.gov>). PHMSA explains its procedures for assessing civil penalties and imposing compliance orders in 49 C.F.R. § 107.307 through 107.331.

What happens if I fail to respond? You waive your right to contest the allegations made in Addendum A to this Notice if you fail to respond within thirty (30) days of receiving it (or by the end of any extension). Also, the Chief Counsel may make a finding of fact consistent with the allegations in this Notice and assess an appropriate civil penalty if you fail to respond within the applicable time frame.



Thomas D. Seymour,
Senior Attorney
Phone: (202) 366-6139
tom.seymour@dot.gov

Enclosures: Addendum A
Addendum B
Addendum C
Case Exhibits

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

PHMSA Case No. 05-0436-SD-CE

SPECIFIC ALLEGATIONS

Probable Violation No. 1

Respondent offered hazardous materials for transportation in 55-gallon drums when Respondent failed to close the drums in conformance with the manufacturers closure instructions, in violation of 49 C.F.R. §§ 171.2(a) and (f), 173.22(a)(4), 173.24(b), and 178.2(b)(2).

Factual Allegations/Averments

- A. On July 22, 2005, Respondent offered a hazardous material (Paint, 3, UN 1263 PG II) for transportation in commerce.
 - B. On August 01, 2005, Respondent offered a hazardous material (Paint, 3, UN 1263 PG II) for transportation in commerce.
 - C. On August 02, 2005, Respondent offered a hazardous material (Paint, 3, UN 1263, PG II) for transportation in commerce.
 - D. On the dates listed in paragraphs A through C above, Respondent packaged the described hazardous materials in 55-gallon open-head drums.
 - E. Respondent closed the ring using a standard impact gun.
 - F. Respondent closed the bung with a standard bung wrench.
 - G. The manufacturer's closure instruction for the drums used by Respondent required the ring and the bung to be closed to a specific torque.
- Please see Inspection/Investigation Report Number 05431066 at pages 2 and 3 and the exhibits accompanying this report, which are incorporated herein.

Probable Violation No. 2

Respondent filled a DOT Specification 57 portable tank ("tote") with a hazardous material and offered the same for transportation in commerce when the tote had not been subjected to the required periodic testing, in violation of 49 C.F.R. §§ 171.2(a); 173.32 (a) and (d); 180.352(b)(1) and (2); and 178.813.

Probable Violation No. 2 - Continued

Factual Allegations/Averments

- A. Respondent owns approximately 50 "DOT Specification 57 portable tanks" ("totes"), which Respondent fills with a hazardous material (Paint, 3, UN 1263, PG II) and Respondent offered the totes, filled with the hazardous material, for transportation in commerce.
- B. Respondent owns, fills with hazardous materials and offers for transportation a tote, which is identified by serial number 92145-14.
- C. Respondent's tote, identified in paragraph B above, is an example of numerous other totes owned and used by Respondent.
- D. Respondent's tote, identified in paragraph B above, was last tested on May 8, 1992.
- E. Respondent's tote, identified in paragraph B above, was due for a periodic retest on or before November 8, 1994.
- F. Respondent has repeatedly filled its tote identified by serial number 92145-14 with a hazardous material (Paint, 3, UN 1263, PG II) and offered the tote, so filled, for transportation in commerce since November 8, 1994.

- Please see Inspection/Investigation Report Number 05431066 at pages 4 and 5, and the exhibits accompanying this report, which are incorporated herein.

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Probable Violation No. 3

Respondent provided training to its hazardous materials employees while failing to keep records of training, in violation of 49 C.F.R. § 172.704(d).

Factual Allegations/Averments

- A. Respondent employs personnel who fill packagings with hazardous materials, who close the packagings, and who perform other functions subject to the HMR.
- B. On or about the dates listed in paragraphs A through C of probable violation No. 1 above, Respondent's employees performed these functions.
- C. Respondent failed to keep all required records of its employees' hazardous materials training and testing.

- Please see Inspection/Investigation Report Number 05431066 at page 6, and the exhibits accompanying this report, which are incorporated herein.

FACTS ALREADY CONSIDERED (UNDER 49 C.F.R. § 107.331) IN SETTING PROPOSED PENALTIES

Prior Violations of the Hazardous Materials Regulations:

PHMSA increases proposed penalties when Respondent has committed a prior violation of the Federal Hazardous Materials Transportation Law or the HMR within the last six years, as determined through a civil penalty case, criminal case, or ticketing process (49 C.F.R. § 107.331(d)). More specifically, “the general standards for increasing a baseline proposed penalty on the basis of prior violations are . . . (1) for each prior civil or criminal enforcement case –25% increase over pre-mitigation recommended penalty, and (2) for each prior ticket–10% increase over pre-mitigation recommended penalty” (49 C.F.R. Part 107, Subpart D, Appendix A, Section IV, E).

PHMSA’s records do not contain any prior violations by Respondent and PHMSA did not consider any prior violations in determining the proposed assessment for the violation in this Notice.

Corrective Action:

An important purpose of PHMSA’s enforcement program is to bring the regulated community into compliance with the Hazardous Materials Regulations, and to promote ongoing efforts by that community to maintain compliance. In determining the final penalty assessment, PHMSA considers documented evidence of actions taken by a Respondent to correct violations and ensure that they do not recur (49 C.F.R. § 107.331 (g)).

As of this date, Respondent has not provided PHMSA with any documentation of corrective action. Respondent is encouraged to provide information and documentation of the steps it has taken to correct the violations alleged below and to prevent future violations of the HMR.

On August 19, 2005, Respondent submitted a letter in Response to the Exit Briefing. However, Respondent did not address any corrective actions in its letter. Accordingly, PHMSA has not provided an mitigation to the baseline civil penalties proposed in this Notice.

Financial Status

Under 49 C.F.R. §107.331 (e) and (f), the proposed penalty may be reduced if Respondent demonstrates that it is unable to pay that penalty, or if payment of the proposed penalty would affect Respondent’s ability to continue in business. Respondent’s poor financial condition may be a basis for reducing the proposed penalty; a healthy financial condition is *not* a basis for increasing the penalty.

PHMSA has no information indicating that Respondent is unable to pay the proposed penalty. If Respondent believes it lacks the ability to pay the proposed penalty or that the proposed penalty will affect Respondent's ability to continue in business, Respondent should submit evidence of its assets and liabilities (i.e. Its most recent Federal income tax return).

TOTAL CIVIL PENALTY PROPOSED

Probable Violation	Maximum Possible Penalty	Baseline Penalty	Increase for Priors	Corrective Action	Proposed Penalty
1	\$32,500	\$2,500	\$ 0	\$ 0	\$2,500
2	\$32,500	\$5,250	\$ 0	\$ 0	\$5,250
3	\$32,500	\$400	\$ 0	\$ 0	\$ 400
TOTAL	\$97,500	\$8,150	\$ 0	\$ 0	\$8,150

DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

How do I respond to this Notice of Probable Violation (Notice)?

You may respond to this Notice in any of three ways:

- (1) Pay the proposed assessment (49 C.F.R. § 107.315);
- (2) Send an informal response, which can include a request for an informal conference (§ 107.317); or
- (3) Request a formal hearing (§ 107.319).

How do I pay the proposed assessment?

You pay the proposed assessment by:

- (1) Sending a wire transfer, through the Federal Reserve Communications System (Fedwire), to the U.S. Treasury account (49 C.F.R. § 89.21(b)(3). Addendum C contains the instructions for sending wire transfers. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-300), ATTN: Shelley Willis, Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125 (Telephone No. 405-954-8893).

Or

- (2) Sending a certified check or money order if the penalty amount is \$10,000 or less. The certified check or money order must be payable to the "U.S. Department of Transportation" and must be mailed to the Chief, Financial Operations Division, Attn: Shelley Willis, Federal Aviation Administration, Mike Monroney Aeronautical Center, AMZ-300, P.O. Box 25082, Oklahoma City, OK 73125.

Or

- (3) Using a credit card via the Internet. To pay electronically with a credit card, visit the following website address and follow the instructions:

<https://www.pay.gov/paygov/>

Where do I send my response?

You must address your informal response or formal hearing request to the attorney who issued the Notice at the following address:

Pipeline and Hazardous Materials Safety Administration
Office of the Chief Counsel (PHC-10)
Room 8417
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590-0001

When is my response due? (§ 107.313)

You must respond to the Notice within thirty (30) days of the date you receive it. The attorney who issued the Notice may extend the 30-day period for your response if you ask for an extension, and show good cause, within the original 30-day period.

What happens if I do not respond? (§ 107.313)

If you fail to respond to the Notice within thirty (30) days of receiving it (or by the end of any extension), you will waive your right to contest the allegations made in Addendum A to the Notice. In addition, the Chief Counsel will issue a default Order finding the facts as alleged in the Notice and assessing the civil penalty as outlined within that notice.

May I propose a compromise offer? (§ 107.327)

Yes. At any time before an order is issued and referred to the Attorney General for collection, you may propose to compromise a civil penalty case by submitting a specific compromise offer amount to the attorney handling the case (§ 107.327). The Chief Counsel may also propose a compromise.

If a compromise is agreeable to all parties, the attorney handling the case will forward a compromise agreement to you for signature. This document will outline the terms of the joint agreement and you must return a signed original to the attorney handling the case within 30 days. After this agreement has been returned it will be signed by the assigned attorney and presented to the Chief Counsel with a request that the Chief Counsel adopt the terms of that agreement by issuing a Compromise Order (49 C.F.R. § 107.327(a)(1)). The terms of the agreement constitute an offer of compromise until accepted by the Chief Counsel. When you agree to a compromise, you give up your right to appeal the order issued by the Chief Counsel.

What should I include in my informal response? (107.317)

Your informal response must contain written explanations, information or arguments that respond to the allegation(s), the amount of the proposed civil penalty, or the terms of a proposed compliance order. Provide complete documentation of your explanations and arguments. No specific format is required for an informal response.

May I request an informal conference? (107.317)

Yes. You may request an informal conference as part of your informal response. Please describe the issues you want to discuss during the conference. After receiving your request, the attorney handling the case will contact you to arrange the conference. Normally the conference will be held by telephone, and the attorney handling the case and the inspector who conducted the compliance inspection will participate in the conference.

What happens after I submit an informal response to the Notice?

We will hold an informal conference if you have asked for one. Based on the Notice, the evidence supporting the Notice, any written explanations, information and documentation that you provide, and matters presented at a conference, the Chief Counsel decides the case. The Chief Counsel may issue an order finding all or some of the violation(s) alleged in the Notice or may withdraw all or some of the alleged violation(s). If the Chief Counsel finds violation(s), the order will assess a civil penalty.

How do I appeal an order? (§ 107.325)

You may appeal an order to PHMSA's Administrator.

How do I request a formal hearing? (§ 107.319)

You must request a formal hearing within 30 days of the date that you receive the Notice. If you are granted an extension of time to respond to the Notice, you must submit a formal hearing request by the end of the extended time period. If you do not request a formal hearing within the specified time, you will waive your right to a formal hearing.

Your request for a formal administrative hearing must include the following:

- (1) The name and address of the respondent and any other person submitting the request;
- (2) A statement of which allegations of violations are not in dispute; and
- (3) A description of the issues that you will raise at the hearing. (The Administrative Law Judge will decide whether issues not raised in the request may be raised at the hearing.)

After receiving a request for a hearing that complies with these requirements, the Chief Counsel will request an Administrative Law Judge from the DOT Office of Hearings to preside over the hearing. Once an Administrative Law Judge is assigned, all further matters in the proceeding will be conducted by the Administrative Law Judge. Either you or PHMSA may appeal the decision of the Administrative Law Judge to PHMSA's Administrator.

How does PHMSA determine if I have committed a violation?

This is a civil penalty case and PHMSA uses the "knowingly" standard, which is defined in the Federal hazardous materials transportation law (See 49 U.S.C. 5123(a)(1)), in all civil penalty cases. The standard for a violation is similar to "negligence." After considering all the available information (including the additional information you provide in your response to the Notice), PHMSA must find either that (1) you had "actual knowledge" of the facts giving rise to the violation, or (2) you had "imputed knowledge," of the facts giving rise to the violation, in that a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge. PHMSA does not need to find that you actually knew about, or intended to violate, requirements in the Federal hazardous material transportation law or the HMR.

What factors does PHMSA consider when proposing and assessing a civil penalty? (§ 107.331)

PHMSA considers the following factors when proposing and assessing a civil penalty for a violation of the regulations:

- (1) The nature and circumstances of the violation(s);
- (2) The extent and gravity of the violation(s);
- (3) The degree of your culpability;
- (4) Your history, if any, of prior offenses;
- (5) Your ability to pay the penalty;

- (6) The effect of the penalty on your ability to continue in business;
- (7) The size of your business, and
- (8) Other matters as justice may require.

The nature and the timeliness of any corrective action you take to prevent future violations of a similar nature will be considered under item No. 8. However, you must submit documented evidence of that corrective action to the PHMSA attorney. If you have submitted documented evidence regarding any of these factors during PHMSA's investigation of the alleged violation(s), and that documentation is referenced in the Notice or accompanying Inspection/Investigation Report, you do not need to resubmit it.

Under the Small Business Regulatory Enforcement Fairness Act (SBREFA), PHMSA must consider the rights of small entities in enforcement actions. PHMSA's hazardous materials enforcement program has been designed to consider small businesses and the penalties that PHMSA proposes and assesses are generally considered appropriate for small businesses. PHMSA takes into consideration the size of the company when proposing and assessing a civil penalty.

However, special consideration may not be given to a small business if:

- (1) The small business has not corrected its violation(s) within a reasonable time;
- (2) The small business has committed one or more prior violations of the HMR;
- (3) The violations involve willful conduct;
- (4) The violations pose serious threats to health, safety or the environment; or
- (5) The small business has not made a good faith effort to comply with the law.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. Our objective is to ensure a fair regulatory enforcement environment.

You have a right to contact the Small Business Administration's national Ombudsman at 1-888-REG-FAIR (1-888-734-3247) or www.sbs.gov/ombudsman regarding the fairness of the compliance and enforcement activities by this agency.

The Pipeline and Hazardous Materials Safety Administration strictly forbids retaliatory acts by its employees. As such, you should feel confident that you will not be penalized for expressing your concerns about compliance and enforcement activities.

Where can I find more information on how PHMSA handles hazardous materials enforcement cases?

A more detailed discussion of these procedures is in 49 C.F.R. §§ 107.301 through 107.333. These procedures are also on the Office of the Chief Counsel's home page at "<http://phmsa-attorney.gov>."

**INSTRUCTIONS FOR ELECTRONIC FUNDS TRANSFER TO
THE FEDERAL AVIATION ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION**

1. <u>RECEIVER'S ABA NO.</u> 021030004	2. <u>TYPE SUBTYPE</u> (provided by sending bank)
3. <u>SENDING BANK ABA NO.</u> (Provided by sending bank)	4. <u>SENDING BANK REF NO.</u> (Provided by sending bank)
5. <u>AMOUNT</u>	6. <u>SENDING BANK NAME</u> (Provided by sending bank)
7. <u>RECEIVER NAME:</u> TREAS NYC	8. <u>PRODUCT CODE</u> (Normally CTR, or as provided by sending bank)
9. <u>BENEFICIARY (BFN) - AGENCY LOCATION CODE</u> <u>BNF=/ AC 69-14-0001</u>	10. <u>REASONS FOR PAYMENT</u> Example: PHMSA - Payment for Case # / Ticket Number/Pipeline Assessment number

INSTRUCTIONS: You, as sender of the wire transfer, must provide the sending bank with the information for Block (1), (5), (7), (9), and (10). The information provided in blocks (1), (7), and (9) are constant and remain the same for all wire transfers to Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #1 - RECEIVER ABA NO.- "021030004". Ensure the sending bank enters this nine-digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

Block #5 - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. EXAMPLE; \$10,000.00

Block #7 - RECEIVER NAME - "TREAS NYC." Ensure the sending bank enters this abbreviation; it must be used for all wire transfer to the Treasury Department.

Block #9 - BENEFICIARY- AGENCY LOCATION CODE - "BNF=/AC-69140001"
Ensures the sending bank enters this information. This is the Agency Location Code for Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

Block #10 - REASON FOR PAYMENT - "AC-payment for PHMSA Case # / To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number, and country."

Note: - A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You, as the sender, can assist this process by notifying, at the time you send the wire transfer to the General Accounting Division (405) 954-4719.

**Inspection / Investigation Report No. 05431066**

U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Hazardous Materials Enforcement

Inspection Location:

Four Seasons Paint Manufacturing Co.
5700 NW 38th St.
Lincoln, NE 68524

Contact: Gregg Champoux, Purchasing
Phone: 402-470-3356
Fax:

Type of Inspection: SHIPPER INSPECTION
(GENERAL)

Result: ENFORCEMENT REPORT

Inspector: CASTELLANOS, LUPE
Code: DHM-43.1
Title: HAZARDOUS MATERIALS
ENFORCEMENT SPECIALIST

Signature:

Inspector #2:
Code:
Title:

Supervisor Name: Kevin W. Boehne
Title: Chief, Central Region

Authorization Date: 8/29/2005

Summary of Inspection

On August 3, 2005, Hazardous Materials Enforcement Specialist Lupe Castellanos, conducted a compliance inspection at Four Seasons Paint Manufacturing, Co., Lincoln, NE. Mr. Gregg Champoux, Purchasing and Mr. John Barga, Laborer, represented the company during the inspection, guided the inspector through the facility, answered questions and provided copies of paperwork requested. Mr. Tom Laswell, Plant Manager was later contacted telephonically and advised of the probable violations.

Four Seasons Paint Manufacturing Co. (Four Seasons), is a manufacturer of industrial coatings and ships flammables, Paint, 3, UN 1263, PGII as hazardous material in both intrastate and interstate commerce. Bill of Ladings/Invoices dated July 22, 2005, August 1, 2005 and August 2, 2005 are exemplary of these shipments (Exhibit 2).

Mr. Champoux signed for a copy of the exit briefing (Exhibit 1) and a copy of the Security Inspection Report (Exhibit 3).

Four Seasons Paint Manufacturing Co.
Inspection / Investigation Report No. 05431066

Violation Number: 1

Number Discovered: 1

49 CFR Section:

173.22(a)(4), 173.24(b)
171.2(a), 171.2(f) and 178.2(b)(2)

Exhibit: 2, 4-11, 12 & 13

Violation Description:

Offering for transportation in commerce a hazardous material Paint, 3, UN 1263, PGII, in UN certified 1A2 55-gallon steel drums, when the drums had not been closed in accordance with the manufacturer's closure notification, in violation of 49 CFR, §§173.22(a)(4), 173.24(b), thereby voiding the UN certification, in violation of 49 CFR, §§171.2(a), 171.2(f) and 178.2(b)(2).

Evidence Summary:

During the inspection, inspector Castellanos asked for shipping papers showing the hazardous materials being shipped by Four Seasons Paint Manufacturing Co. (Four Seasons). Four Seasons' Bill of Ladings, dated July 22, 2005, August 1, 2005 and August 2, 2005, shows they shipped a total of (7) drums of Paint, 3, UN 1263, PGII (Exhibit 2, Pages 1,2&3).

The inspector then went to the filling station, escorted by Mr. Gregg Champoux, Purchasing and Mr. John Barga, Laborer, where she observed and photographed a steel 55-gallon UN 1A2 tight head drum which was being filled and prepared for shipment (Exhibits 4-11). The inspector asked the filler what procedure he used to close the UN 55 gallon open-head steel drums.

The filler demonstrated to the inspector how he closed the drum by torquing the bolt through the lugs with an pneumatic impact wrench (gun), until the rings ends where almost together, then he used a mallet to tap the ring. When the inspector asked the filler if they ever used a torque wrench or torque impact wrench (gun) to close the UN drums, he said they did not and that this was the way he was instructed to close the drums and he did not know of any torque specifications for closing the drums.

Additionally, the inspector noted the impact wrench (gun) was not fitted with a torque extension. The inspector then asked the filler if he knew the the approximate gap the drum ring should have after threading the bolt through the lug, and he said he did not know and usually just got the two ring ends as close as possible. The inspector asked the filler and Mr. Barga if they had received function specific training as it related to the closure of UN-drums, and they told the inspector that they had not (Exhibit 12).

Mr. Barga then told the inspector that they did have torque wrenches and showed the inspector two torque wrenches, but he did not know to what torques they were set at (Exhibits 10&11), he also told the inspector

Four Seasons Paint Manufacturing Co.
Inspection / Investigation Report No. 05431066

he did not know what the drum closure specifications were for the UN drums. The inspector noted that the torque setting on the torque wrench handles were covered with duct tape and the settings as well as the adjustment capabilities was inaccessible. Mr. Barga later found the closure instructions provided to them by their drum supplier, Jones Barrel, Omaha, NE (Exhibit 13).

The closure instructions for the Jones Barrel drums showed that proper closure of the UN open head drums required a specified torque pressure of 40 ft.-60 ft. lbs. for the bolt closure leaving an approximate 1/4" to 1/8" gap from each end of the ring (Exhibit 13).

The inspector explained that Four Season's failure to close the UN certified 1A2 steel open head drums containing hazardous materials in the method prescribed by the drum manufacturer and certifier was a violation of the Hazardous Materials Regulations, and that such failure also voided the UN certification of the drums.

This probable violation was explained to Mr. Barga and Mr. Champoux during the exit briefing.

Violation Number: 2

Number Discovered: 2

49 CFR Section:

173.32(a)&(d) and 180.352(b)(1)&(2)
171.2(a) and 173.32(a)&(d),
180.352(b)(1)&(2) and 178.813

Exhibit: 2, 14-16 & 18

Violation Description:

Filling and offering for transportation in commerce a DOT Specification 57 portable tank, with a hazardous material, Paint, 3, UN 1263, PGII, when at the time of shipping, the tote was out of test as prescribed in Sections 173.32(a)&(d) and 180.352(b)(1)&(2), and therefore, an unauthorized package, in violation of 49 CFR, Sections 171.2(a) and 173.32(a)&(d), 180.352(b)(1)&(2) and 178.813.

Evidence Summary:

During the inspection at Four Seasons, the inspector asked Mr. Champoux and Mr. Bargas, to show her the totes that were ready for shipment. The inspector was shown approximately 8 totes which were filled and placarded. The inspector then observed and photographed a filled UN DOT 57 portable tank bearing a Class 3 (Flammable Placard) with an Identification number of UN1263 and a shipping description of Paint (Exhibits 14-16). The DOT Specification 57 portable tank, model No. 510811, Serial No. 92145-14 showed an original test date of "05-8-92"(May 8, 1992) and no retest dates since (Exhibit 16).

The inspector asked Mr. Champoux and Mr. Bargas if they were performing the periodic leakproof test every 2.5 years, they told the inspector that they were not. They both told the inspector that Four Seasons owned approximately 50 DOT 57 portable tanks with about half of them in service and that they did not keep a record of the serial numbers or any test dates on any of the totes they ship out with the hazardous materials (Exhibit 18).

The inspector reviewed copies of bill of ladings/invoices which showed recent shipments among other hazardous materials tanks of Paint. The inspector noted that the specific totes (DOT 57's) are not noted on the shipping papers, but was told by Mr. Champoux and Mr. Bargas that the DOT 57 observed had been used and continued to be used to transport Paint, 3, UN 1263, PGII.. Bill of Lading/Invoice #165-165007583, dated August 1, 2005, is exemplary of DOT 57's of Paint, 3, UN1263, PGII, being shipped by Four Seasons without performing the necessary periodic visual and leakproof testing as required by 180.352(b)(1)&(2) (Exhibit 2, Page 2).

Section 173.32(a)(2) states that a portable tank for which the prescribed retest or reinspection has become due may not be filled and offered for transportation until the retest or reinspection has been successfully

completed. Each IBC intended to contain liquids must be tested in accordance with the leakproofness test prescribed in §178.813, starting from date of manufacture.

This probable violation was explained to Mr. Champoux during the exit briefing.

Violation Number: 3

Number Discovered: 3

49 CFR Section:

172.704(a)(3), 172.704(d),
172.700, 172.702(a), 172.704(c)(2),
172.704(d) & 171.2(a)

Exhibit: 2, 12 & 17

Violation Description:

Allowing an employee to perform a function subject to the requirements of the hazardous materials regulations (HMR), when Function Specific training was not conducted as prescribed in §172.704(a)(3), and records of current hazmat training were not retained as prescribed in §172.704(d), in violation of 49 CFR, §§172.700, 172.702(a), 172.704(c)(2), 172.704(d) & 171.2(a).

Evidence Summary:

During the inspection, the inspector reviewed shipping papers which showed that Four Seasons Paint Manufacturing Co. is offering Paint, 3, UN 1263, PGII, for transportation in both intrastate and interstate commerce. Four Seasons' Bill of Ladings, dated July 22, 2005, August 1, 2005 and August 2, 2005, are exemplary of these shipments (Exhibit 2). The inspector requested the documentation showing that all employees involved in shipping hazardous materials, have been trained as specified in §172.704.

During the inspection Mr. Champoux and Mr. Barga showed the inspector records of training which showed that General Awareness, Safety and Security Awareness had been provided by Four Seasons (Exhibit 17). The inspector however, took exception to lack of Function Specific training provided to Four Seasons' fillers/packagegers as it related to the proper closure of UN specification packaging. During the inspection that day the inspector had observed the filling and preparation of UN 55-gallon open-head drums at Four Seasons' filling station, and noted that none of the fillers/warehousemen knew what the proper torque pressures or closure procedures were for the UN drums and were thereby violating the integrity of the UN specification packaging (See violation No. 1). When the inspector asked the filler and Mr. Barga if they knew what the proper closure procedures were for the UN 55-gallon open-head drums they both told the inspector that they did not know. The filler told the inspector that they had not been told that the drums had to be closed to certain specified torque pressures (Exhibit 12). Mr. Champoux and Mr. Barga were unable to provide the inspector with any function specific training records and/or information which showed that Four Seasons' training program included all the required Function-specific training material as prescribed in §172.704.

This probable violation was explained to Mr. Champoux during the exit briefing.

Additional Information Pertaining to the Inspection:

Exhibit Summary

Evidence		Obtained From		
No.	Description	Name, Title	Company	City, State
1	Exit Briefing.	Gregg Champoux, Purchasing	Four Seasons Paint Manufacturing Co.	Lincoln, NE
2	Shipping papers.	Gregg Champoux, Purchasing	Four Seasons Paint Manufacturing Co.	Lincoln, NE
3	Security Inspection Report.	Gregg Champoux, Purchasing	Four Seasons Paint Manufacturing Co.	Lincoln, NE
4	Steel 55-gallon UN drum.	Gregg Champoux, Purchasing	Four Seasons Paint Manufacturing Co.	Lincoln, NE
5	Photo of UN drum and closure tools.	Gregg Champoux, Purchasing	Four Seasons Paint Manufacturing Co.	Lincoln, NE
6	Photo of UN Drum containing flammable liquids.	Gregg Champoux, Purchasing	Four Seasons Paint Manufacturing Co.	Lincoln, NE
7	Photo of flammable label on UN drum.	Gregg Champoux, Purchasing	Four Seasons Paint Manufacturing Co.	Lincoln, NE
8	Photo of Company label on UN drum, showing shipping description.	Gregg Champoux, Purchasing	Four Seasons Paint Manufacturing Co.	Lincoln, NE
9	Photo showing UN markings on UN drum.	Gregg Champoux, Purchasing	Four Seasons Paint Manufacturing Co.	Lincoln, NE
10	Picture of two torque wrenches.	Gregg Champoux, Purchasing	Four Seasons Paint Manufacturing Co.	Lincoln, NE
11	Picture of torque wrench markings.	Gregg Champoux, Purchasing	Four Seasons Paint Manufacturing Co.	Lincoln, NE
12	Oral statement regarding training.	Gregg Champoux, Purchasing	Four Seasons Paint Manufacturing Co.	Lincoln, NE
13	Closure Instructions for drums.	Gregg Champoux, Purchasing	Four Seasons Paint Manufacturing Co.	Lincoln, NE
14	Picture of UN 57 portable tank.	Gregg Champoux, Purchasing	Four Seasons Paint Manufacturing Co.	Lincoln, NE
15	Picture of DOT 57 portable tank showing flammable	Gregg Champoux, Purchasing	Four Seasons Paint Manufacturing Co.	Lincoln, NE

Four Seasons Paint Manufacturing Co.
Inspection / Investigation Report No. 05431066

Evidence		Obtained From		
No.	Description	Name, Title	Company	City, State
	liquid and company name.			
16	Picture of DOT 57 portable tank's Serial No. and retest dates.	Gregg Champoux, Purchasing	Four Seasons Paint Manufacturing Co.	Lincoln, NE
17	Training records.	Gregg Champoux, Purchasing	Four Seasons Paint Manufacturing Co.	Lincoln, NE
18	Oral statement regarding totes.	Gregg Champoux, Purchasing	Four Seasons Paint Manufacturing Co.	Lincoln, NE



US Department
of Transportation

Pipeline and Hazardous
Materials Safety Administration

Office of Hazardous
Materials Enforcement
Central Region

2300 E. Devon Ave. Suite 478
Des Plaines, Illinois 60018
(847) 294-8580
(847) 294-8590 - Fax

EXIT BRIEFING

(This document is not a final report.)

Date: 8-3-05 Report Control #: 05431066

Company Name: FOUR SEASONS PAINT Mfg. Co.

Address: 5700 NW 38th St., LINCOLN, NE 68524

NAME OF INDIVIDUALS RECEIVING BRIEFING:

Name: Gregg Champoux Title: Purchasing.

Name: _____ Title: _____

Name: _____ Title: _____

This has been a compliance inspection conducted in accordance with Title 49 U.S.C. Section 5121(c). This exit briefing addresses only the areas noted, and it is not a finding of general compliance in any other areas covered by the Hazardous Materials Regulations that were subject to the inspection.

During the course of the inspection the following probable violations of 49 CFR and/or quality control items were noted:

PROBABLE VIOLATIONS:

Section:

Explanation:

173.22

U.S. DOT/PHMSA/OHME/CE

REPORT NUMBER: 05431066

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PAGE 1 OF 3

Failure to close UN PACKAGING
ACCORDING TO Manufacturers Closure
instructions.

DRUMS - NOT TORQUING TO SPECS
DRUM NOT FITTED PROPERLY

~~BOXES NOT USING PLASTIC TAPE~~

Section:

Explanation:

172.704

No HAZMAT TRAINING AS IT RELATES
TO FUNCTION SPECIFIC TRAINING ON
UN DRUM + BOX SPECIFICATION CLOSURES.

U.S. DOT/PHMSA/OHME/CENTRAL REGION

REPORT # _____

EXHIBIT # _____

PAGE _____ OF _____

PROBABLE VIOLATIONS:

Section: _____

Explanation: _____

172.800

~~NO RISK ASSESSMENT IN SECURITY PLAN.~~

OK

Section: _____

Explanation: _____

180.352(b)

NOT PERFORMING PERIODIC TESTING
ON IM PORTABLE TANKS (TOTES) EVERY
2 1/2 YRS.

Section: _____

Explanation: _____

Section: _____

Explanation: _____

Section: _____

Explanation: _____

**U.S. DOT/PHMSA/OHME/CE
REPORT NUMBER: 05431066
EXHIBIT NUMBER: 1
PAGE 2 OF 3**

Report Control #: _____

This document is not a final report. The information gathered at this inspection and any probable violations noted will be reviewed prior to finalizing the report. Probable violation(s) may be removed or others may be added during this review. In addition, quality control items may be revised to become probable violations during this review.

Upon determination that a probable violation exists, the Associate Administrator for Hazardous Materials Safety is authorized to impose certain sanctions, including warning letters, compliance orders, and civil penalties. In addition, court actions, including injunctive or criminal proceedings, may be initiated. Title 49 U.S.C. Sections 5123 and 5124 provide for civil and criminal penalties for violation of the Hazardous Materials Regulations.

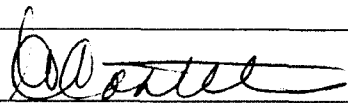
A civil penalty of not more than \$32,500, but not less than \$275, per violation may be imposed through administrative proceedings initiated by the Office of Chief Counsel of the Pipeline and Hazardous Materials Safety Administration. When a criminal violation has been determined by a court, a fine, or imprisonment for not more than 5 years, or both, may be imposed for each violation.

The inspector does not determine which sanction, if any, may be imposed and cannot provide information concerning what proceedings will be initiated or sanctions imposed.

Documentation of corrective action submitted in writing to the inspector within 30 days of the inspection may be considered for mitigation should the sanction imposed result in the issuance of a notice proposing a civil penalty. However, any documented corrective action would not eliminate or preclude the initiation of a civil penalty proceeding, a finding of violation, or assessment of a civil penalty.

Our objective is to ensure a fair regulatory enforcement environment. If you feel you have been treated unfairly or unprofessionally, you may contact John J. O'Connell, Jr. at 202-366-4700, or e-mail us at OHME-HQ@dot.gov. You also have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities by this agency. The Pipeline and Hazardous Material Safety Administration strictly forbids retaliatory acts by its employees. As such, you should feel confident that you will not be penalized for expressing your concerns about compliance and enforcement activities.

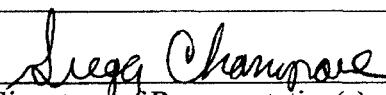
I certify that I received the above briefing as it appears on this form. I understand that by signing this form I am in no way expressing agreement with its contents. I am only acknowledging that I have reviewed it and have received a copy.



Signature of Inspector(s)

8-3-05

Date



Signature of Representative(s)

8/3/05

Date

U.S. DOT/PHMSA/OHME/CE
REPORT NUMBER: 05441066
EXHIBIT NUMBER: 1
PAGE 3 OF 3

U.S. DOT/PHMSA/OHME/CENTRAL REGION
REPORT # _____
EXHIBIT # _____
PAGE _____ OF _____

LADING

STRAIGHT BILL OF LADING—SHORT FORM—ORIGINAL—NOT NEGOTIABLE

Designate with an (X)

BY TRUCK ☒ FREIGHT ☐

SPECIAL SHIPPING INSTRUCTIONS

☐ KEEP FROM FREEZING

FROM: FOUR SEASONS PAINT -165

TO: REINKE MFG CO
105 REINKE RD

DATE: 07/22/05 14:10

INVOICE #: 165-165007634

LINCOLN NE
(402) 470-3356DESHLER NE 68340
(402) 365-7251

CARRIER: CANNING

L#	BAGS	BOXES	5 GAL	DRUMS	TANKS	MISC HM DESCRIPTION / CLASSIFICATION	WEIGHT/LBS CL
1				3		X PAINT, 3, UN1263, II ERG#120	1860.00 55
TOTAL				3			

U.S. DOT/PHMSA/OHME/CE
 REPORT NUMBER: 0511066
 EXHIBIT NUMBER: 2⁴³
 PAGE 1 OF 3

TOTAL WEIGHT/LBS: 1860.00

DV LOG: GAL OF DV PNT: 150.000 LBS OF DV PNT: 1860.00 LBS OF SUN: .00 LBS OF RAW MAT: .00
 GAL OF DV THN: .000 LBS OF DV THN: .00 LBS OF POW: .00 LBS OF EMPTY TOTES: .00

Certifications

Subject to Section 7 of conditions of applicable bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement.

This is to certify that the above-named materials are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to the applicable regulations of the Department of Transportation.

Signature of Shipper

* If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

† Shipper's Imprints in lieu of stamp; not a part of Bill of Lading approved by the Interstate Commerce Commission. Note—Where the rate is depended on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____

‡ The fibre boxes used for this shipment conform to the specifications set forth in the box makers certificate thereon, and all other requirements of the Consolidated Freight Classification.

Shipper

Per

The carrier shall not make delivery of this shipment without payment of freight and other lawful charges. Per _____

(Signature of Consignor)

Prepayment

☒ TO BE PREPAID

Received \$ _____ to apply in prepayment of the charges on the property described hereon. _____

Agent or Cashier

Per _____
(Signature acknowledges on the amount prepaid.)

Charges advanced:

\$

C.O.D. Shipment

C.O.D. Amt _____

Collection Fee _____

Total Chgs _____

IN CASE OF EMERGENCY
 CALL CHEMTREC 1-800-424-9300

Shipper, per

Agent, per

Canning - Canning B. 7-2205
 11/11/05 11040-05

BY TRUCK & FREIGHT
 SPECIAL SHIPPING INSTRUCTIONS
☐ KEEP FROM FREEZING

FROM: FOUR SEASONS PAINT -165

TO: TRUSSBILT
 555 LINCOLN AVE NW

DATE: 08/01/05 14:00
 INVOICE #: 165-165007583

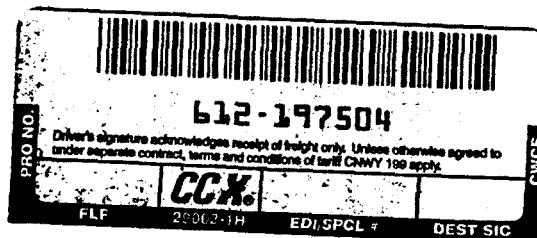
LINCOLN ME
 (402) 470-3356

HURON SD 57350
 (605) 528-3113

Calc # 87

CARRIER: CCX

#	BAGS	BOXES	5 GAL	DRUMS	TANKS	MISC HM DESCRIPTION / CLASSIFICATION	WEIGHT/LBS CL
1			5	2	1	X PAINT, 3, UN1263, II ERG128	5035.60 55
2		12				ORM-D CONSUMER COMMODITY	155.52 55
TOTAL		12	5	2	1		



U.S. DOT/PHMSA/OHME/CE
 REPORT NUMBER: 0511066
 EXHIBIT NUMBER: 2⁴³
 PAGE 2 OF 3

TOTAL WEIGHT/LBS: 5191.12

DV LOG: GAL OF DV PNT: 429.752 LBS OF DV PNT: 5191.12 LBS OF SUN: .00 LBS OF RAW MAT: .00
 GAL OF DV THN: .000 LBS OF DV THN: .00 LBS OF POW: .00 LBS OF EMPTY TOTES: .00

Certifications

Subject to Section 7 of conditions of applicable bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement.

This is to certify that the above-named materials are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to the applicable regulations of the Department of Transportation.

Signature of Shipper

* If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading state whether it is "carrier's or shipper's weight."

† Shipper's Imprints in lieu of stamp; not a part of Bill of Lading approved by the Interstate Commerce Commission. Note—Where the rate is depended on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding 871.125

‡ The fibre boxes used for this shipment conform to the specifications set forth in the manufacturers' instructions, and all other requirements of the Consolidated Freight Classification.

Shipper

The carrier shall not make delivery of this shipment without payment of freight and other lawful charges. Per _____

(Signature of Consignor)

Prepayment

☒ TO BE PREPAID

Received \$ _____ to apply in prepayment of the charges on the property described hereon. _____

Agent or Cashier

Per *FWTE* (Signature acknowledges on the amount prepaid.)

Charges advanced:

C.O.D. Shipment

C.O.D. Amt _____

Collection Fee _____

Total Chgs _____

IN CASE OF EMERGENCY
 CALL CHEMTREC 1-800-424-9300

Shipper, per

Agent, per

11040-DV

BILL OF LADING STRAIGHT BILL OF LADING—SHORT FORM—ORIGINAL—NOT NEGOTIABLE

Designate with an (X)
BY TRUCK ☒ FREIGHT ☐

SPECIAL SHIPPING INSTRUCTIONS

☐ KEEP FROM FREEZING

FROM: FOUR SEASONS PAINT -165

TO: GREAT DANE TRAILERS
1200 N CENTENNIAL ROAD

DATE: 08/02/05 14:05
INVOICE #: 165-165006878

LINCOLN NE
(402) 470-3356

WAYNE NE 68787
(402) 375-5500

CARRIER: NTC

L#	BAGS	BOXES	5 GAL	DRUMS	TANKS	MISC HM DESCRIPTION / CLASSIFICATION	WEIGHT/LBS CL
1				2		X PAINT, 3, UN1263, III ERG #128	864.00 55
TOTAL				2			

U.S. DOT/PHMSA/OHME/CE
REPORT NUMBER: 05941066
EXHIBIT NUMBER: 2⁴³
PAGE 3 OF 3

*NTC
8/02/05
David C.
#8000
15 kids with
2 drum out*

12500039



TOTAL WEIGHT/LBS: 864.00

DV LOG: GAL OF DV PNT: 100.000 LBS OF DV PNT: 864.00 LBS OF SUN: .00 LBS OF RAW MAT: .00
GAL OF DV THIN: .000 LBS OF DV THIN: .00 LBS OF POW: .00 LBS OF EMPTY TOTES: .00

Certifications

Subject to Section 7 of conditions of applicable bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement.

This is to certify that the above-named materials are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to the applicable regulations of the Department of Transportation.

RD
Signature of Shipper

* If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

† Shipper's Imprints in lieu of stamp; not a part of Bill of Lading approved by the Interstate Commerce Commission. Note—Where the rate is depended on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____

‡ The fibre boxes used for this shipment conform to the specifications set forth in the box makers certificate thereon, and all other requirements of the Consolidated Freight Classification.

Shipper _____ Per _____

The carrier shall not make delivery of this shipment without payment of freight and other lawful charges. Per _____

(Signature of Consignor)

Prepayment

☒ TO BE PREPAID

Received \$ _____ to apply in prepayment of the charges on the property described hereon. _____

Agent or Cashier

Per _____
(Signature acknowledges on the amount prepaid.)

Charges advanced:

C.O.D. Shipment

C.O.D. Amt _____

Collection Fee _____

Total Chgs _____

IN CASE OF EMERGENCY
CALL CHEMTREC 1-800-424-9300

Shipper, per *RD Hend*

Agent, per _____

INVESTIGATIVE NOTES
COMPILED AND RETAINED FOR ENFORCEMENT PURPOSES



**PIPELINE AND HAZARDOUS MATERIAL SAFETY
ADMINISTRATION HAZMAT SECURITY INSPECTION**



Inspection Date: 8-3-05

Facility Name and Address: FOUR SEASONS PAINT Mfg. Co.
5700 NW 38th St.
LINCOLN, NE 68524

Company Officials Interviewed: _____

Title: _____

1. Does the company offer any of the following for transportation:[§ 172.800(b)]

- ☐ a) A highway route controlled quantity of a Class 7 material.
- ☐ b) More than 55 pounds of a Division 1.1, 1.2, 1.3 in a motor vehicle, rail car, or freight container.
- ☐ c) More than 1 liter per package, of a material poison by inhalation, Zone A.
- ☐ d) A quantity of a hazardous material in a bulk packaging (> 3,500 gallons for liquids/gas, 468 cubic feet for solids).
- ☐ e) >5,000 lbs. (gw) of one hazard class in non-bulk packaging for which placarding of a vehicle, rail car or freight container is required.
- ☐ f) A select agent or toxin listed in 42 CFR, Part 73.
- ☒ g) A quantity of hazardous materials that requires placarding
- ☐ h) None of the above: Security Plan is not required, though Security Awareness Training is still required to be conducted (see page 2, Security Training)

2. Does the company have a written security plan? Yes

3. Has it been approved by another Federal agency [172.804]? No

4. If yes, name of agency N/A and date approved _____

U.S. DOT/PHMSA/OHME/CE
REPORT NUMBER: 05311066
EXHIBIT NUMBER: 3⁴³

IN PAGE 1 OF 4

COMPILED AND RETAINED FOR ENFORCEMENT PURPOSES

INVESTIGATIVE NOTES
COMPILED AND RETAINED FOR ENFORCEMENT PURPOSES

5. Does the plan include a security assessment of possible transportation security risks [172.802]?

Yes OK

6. Does the plan include measures to address the assessed risk(s)? Yes OK
Check off list was only info provided in Appendix A.

7. Does the plan address personnel security?

Yes

8. What method is in place to confirm information provided by employees hired for positions that involve access to or handling of materials covered by the security plan?

Screening / background

9. Is the company adhering to its personnel security plan?

Yes

10. Does the plan address unauthorized access?

Yes

11. Does the company adhere to the plan to prevent unauthorized persons to gain access to hazmat covered by the plan or transport conveyances being prepared for transportation?

Yes

U.S. DOT/PHMSA/OHME/CE
REPORT NUMBER: 053-1066
EXHIBIT NUMBER: 3⁴³
PAGE 2 OF 4

INVESTIGATIVE NOTES
COMPILED AND RETAINED FOR ENFORCEMENT PURPOSES

INVESTIGATIVE NOTES
COMPILED AND RETAINED FOR ENFORCEMENT PURPOSES

12. Does the plan address en route security?

Yes

13. Does the company adhere to its en route security plan from origin to destination, including private/contract/common carrier?

Yes

SECURITY TRAINING

14. Has the company conducted security awareness training (SAT)? *

Yes

15. Does the security awareness training include a component on how to recognize and respond to possible security threats?

Yes

16. Has each HM employee, hired after March 25, 2003, received SAT within 90 days of hire?

Yes

17. Has the company conducted in-depth security training (plan specific) for all HM employees by December 22, 2003?

Yes

18. Does the in-depth training program include the following:

a. Company security objectives?

Yes

b. Specific security objectives?

c. Employee responsibilities?

d. Actions to take in the event of a security breach?

e. Organizational security structure? U.S. DOT/PHMSA/OHME/CE

REPORT NUMBER: 05311066

EXHIBIT NUMBER: 3

PAGE 3 OF 4

INVESTIGATIVE NOTES
COMPILED AND RETAINED FOR ENFORCEMENT PURPOSES

**INVESTIGATIVE NOTES
COMPILED AND RETAINED FOR ENFORCEMENT PURPOSES**

19. Has the company created and retained records of employee security training?

Yes

Additional Notes

U.S. DOT/PHMSA/OHME/CE
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PAGE 4 OF 4

[* Note: A company is not required to test or retain records concerning the new security plan training requirement until an employee's next scheduled retraining or within the 3 year Hazmat Employee training cycle.]

This inspection report assesses your compliance with our Security Plan regulations (49 CFR §§ 172.704 (Training), 172.800 (Purpose and Applicability), 172.802 (Components of a security plan), and 172.804 (Relationship to other Federal requirements)). **This inspection report and any comments made during this evaluation do not constitute an endorsement or approval of your security program in whole or in part. Do not send us a copy of your Security Plan as a part of corrective action. If we need a copy of your Security Plan we will specifically request it in writing.**

I hereby certify that the above responses are true to the best of my knowledge.
Persons Interviewed:

Signature _____ Title _____ Date _____

Signature _____ Title _____ Date _____

Inspector(s):

Signature *[Signature]* Title H.M.E.S. Date 8-3-05

Signature _____ Title _____ Date _____

Nothing Follows. _____ (Inspector's Initials)

The following website may be helpful in the development and administration of security plans:

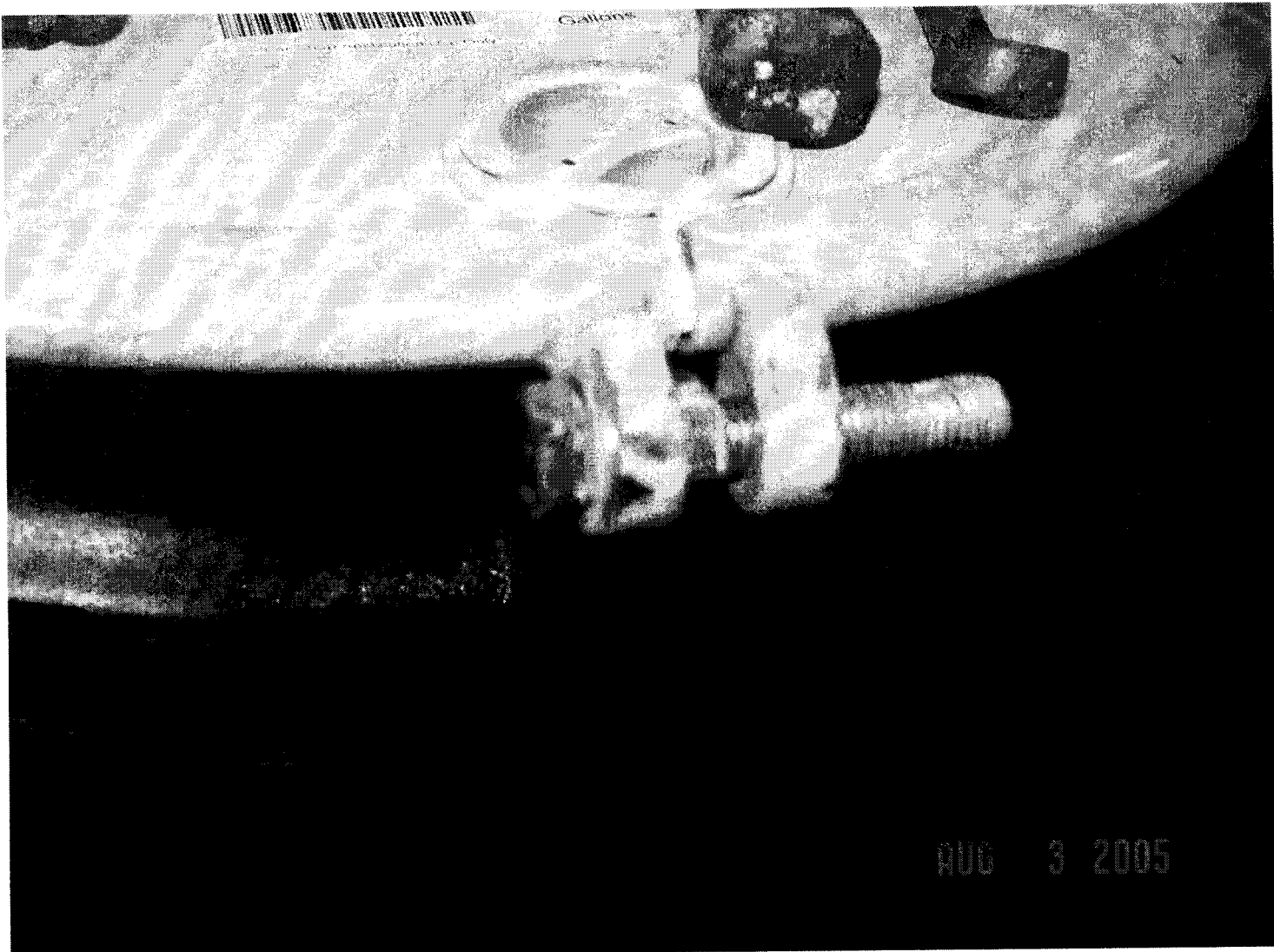
http://hazmat.dot.gov/hmt_security.htm

**INVESTIGATIVE NOTES
COMPILED AND RETAINED FOR ENFORCEMENT PURPOSES**

PHOTOGRAPHIC EXHIBIT

Location: Four Seasons Paint Manufacturing
Lincoln, NE

Photographer: Castellanos, Lupe



USDOT / RSPA / OHME

Exhibit No: 4

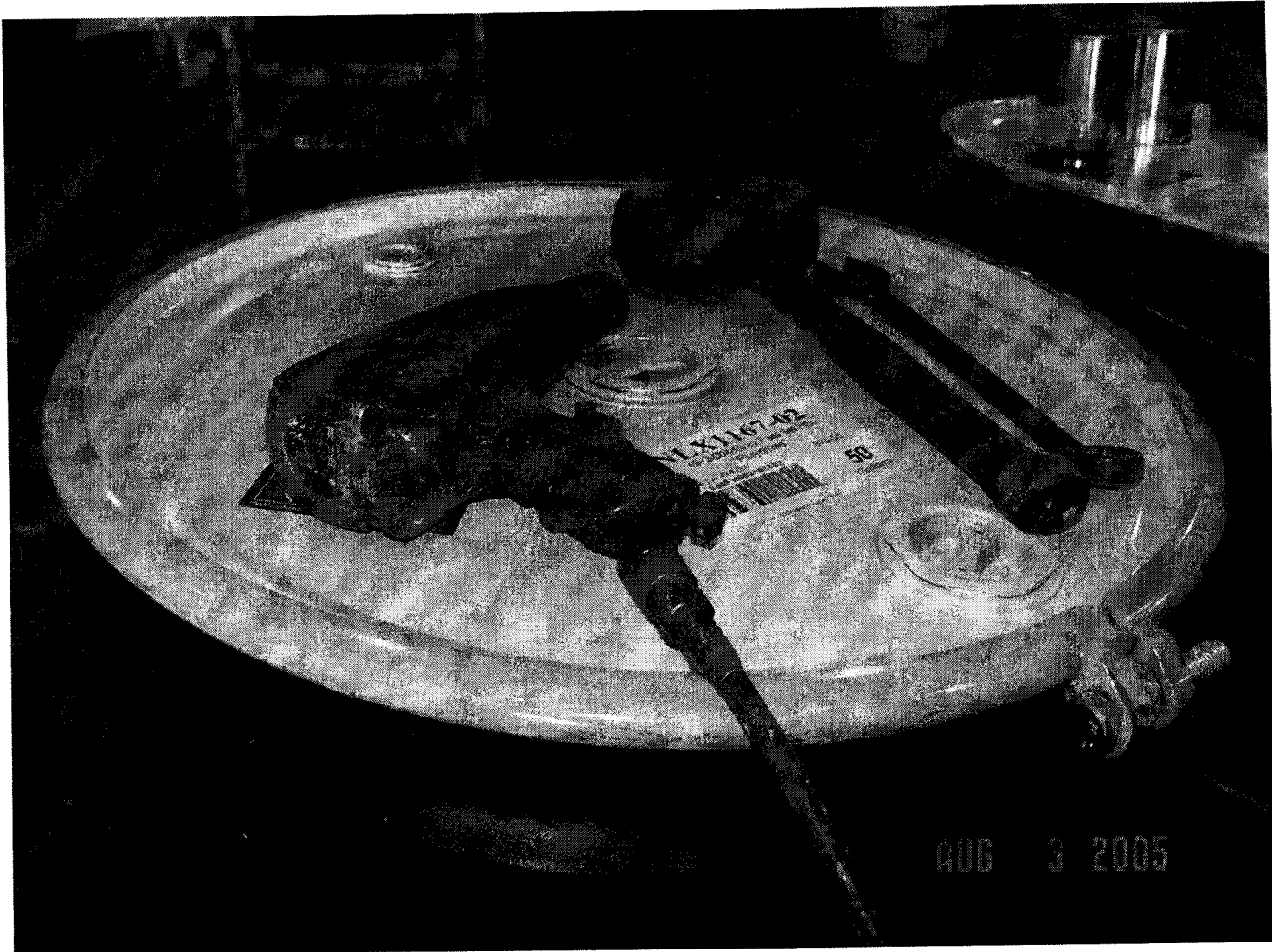
Report No.: 05431066

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PHOTOGRAPHIC EXHIBIT

Location: Four Seasons Paint Manufacturing
Lincoln, NE

Photographer: Castellanos, Lupe



USDOT / RSPA / OHME

Exhibit No: 5

Report No.: 05431066

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PHOTOGRAPHIC EXHIBIT

Location: Four Seasons Paint Manufacturing
Lincoln, NE

Photographer: Castellanos, Lupe



USDOT / RSPA / OHME

Exhibit No: 6

Report No.: 05431066

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PHOTOGRAPHIC EXHIBIT

Location: Four Seasons Paint Manufacturing
Lincoln, NE

Photographer: Castellanos, Lupe



USDOT / RSPA / OHME

Exhibit No: 7

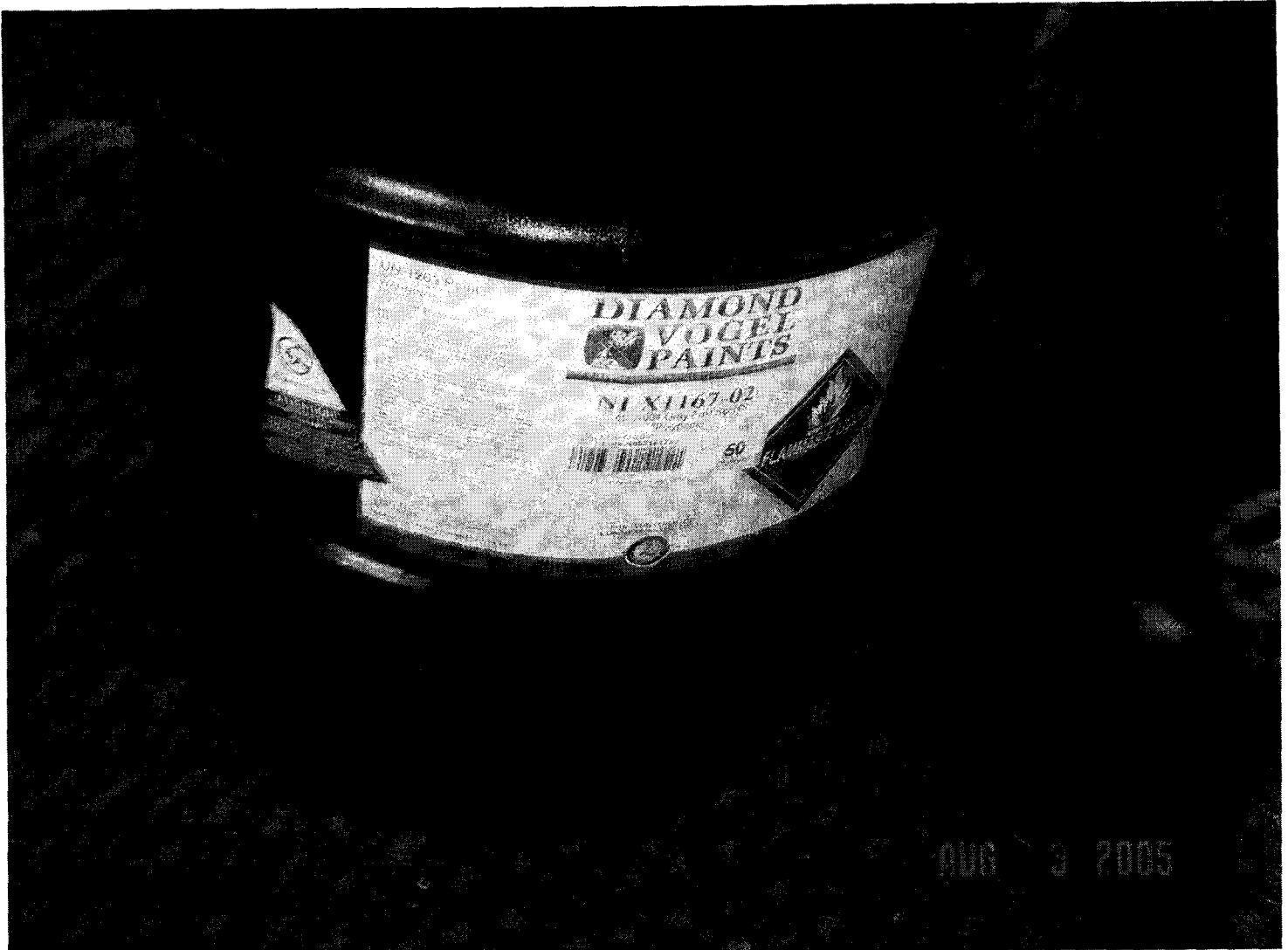
Report No.: 05431066

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PHOTOGRAPHIC EXHIBIT

Location: Four Seasons Paint Manufacturing
Lincoln, NE

Photographer: Castellanos, Lupe



USDOT / RSPA / OHME

Exhibit No: 8

Report No.: 05431066

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PHOTOGRAPHIC EXHIBIT

Location: Four Seasons Paint Manufacturing
Lincoln, NE

Photographer: Castellanos, Lupe



PHOTOGRAPHIC EXHIBIT

Location: Four Seasons Paint Manufacturing
Lincoln, NE

Photographer: Castellanos, Lupe



PHOTOGRAPHIC EXHIBIT

Location: Four Seasons Paint Manufacturing
Lincoln, NE

Photographer: Castellanos, Lupe



U.S. Department of Transportation
Research & Special Programs Admin
Office of Hazardous Materials Enforcement

ORAL INTERVIEW

Person Conducting Interview: Lupe Castellanos, HMES, 43.1
Place of Interview (City, State): Lincoln, NE
Date: August 3, 2005
Type of Operation: Shipper

Name and Address of Firm: Four Seasons Manufacturing Co.
Lincoln, NE

Answer from Mr. John Barga, Laborer, and to one of the fillers closing a UN drum at the filling station, to a question asked by inspector Castellanos during the inspection.

Q. Are you closing these UN 55-gallon open-head steel drums to a specific torque pressure?

A. No, we just use a regular airgun, wrench and mallet to close them, this is the way we were instructed. We were not told to close the drums to specific torque pressures.

Q. Do you have torque wrenches here?

A. Yes we do, we have two.

Q. Do you know to what torque pressure they are preset at?

A. No.

Q. Has Four Seasons provided any hazmat training as it relates to function specific training on the proper closure of UN specification packaging?

A. No.

U.S. DOT/PHMSA/OHME/CE
REPORT NUMBER: 05311066
EXHIBIT NUMBER: 12¹³
PAGE 1 OF 1



CLOSURE INFORMATION FOR FULL OPEN TOP STEEL DRUM WITH BOLTED RING CLOSURE

You have purchased full open head steel drums used for shipping hazardous materials. Per Department of Transportation Regulations, we are supplying you with closure instructions. Refer to C.F.R. PART 178.2 (c) (1). Please note that, as delivered, the closures are not tightened for shipment. It is the customer's responsibility to forward these instructions to the appropriate personnel:

1. First become visually familiar with the container and its parts.
2. The drum comes in three main parts: The drum shell, drum lid, and drum ring, including the nut and bolt. The lid is a solid round piece of metal approximately 22 to 24 inches in diameter. The top of the lid may or may not have bungs in it, but will have a gasket glued to the underside of the lid. The ring is circular with the sides of the ring being C shaped. Welded at each end of the ring are two round metal parts with 5/8" holes in them called lugs. Also, a 5/8" bolt and a 5/8" jam nut will be attached to it for closure.
3. Some of the tools you may need for closing an open top steel drum are: a torque wrench, a mallet, a universal bung wrench, and appropriate sized open-ended wrenches.

STARTING CLOSURE PROCEEDURE

1. Start closure proceeding by setting the drum shell upright with the opening to the top.
2. Bungs may be found in the shell of the drum and/or in the lid. Make sure gaskets are still in place on the bungs. Make sure all bungs are in the appropriate sized flanges, and hand tighten to insure no cross threading. Using a proper wrench, tighten all bungs to the appropriate torques. See chart on back.
3. Set the lid right side up on drum shell making sure of a snug fit around the diameter of the lid.
4. Place the ring around the drum lip and lid lip making sure both drum lip and lid lip edge are enclosed in C shape area of the ring. Be sure lugs point down.
5. Place the bolt through the unthreaded lug. Then thread the nut onto the bolt up to about 1/4" from the unthreaded lug. Next, thread the bolt into the threaded lug, which is opposite the unthreaded lug, leaving an approximate 1/4" to 1/8" gap from each end of the ring. While you're doing this, tap the entire perimeter of the ring with a mallet, starting directly across from the bolt, and tighten bolt to an approximate torque of 40 to 60 foot-pounds. Tighten the nut up to the unthreaded lug to prevent the bolt from backing out.

DISCLAIMERS

Product compatibility with the container is a shipper's responsibility. These instructions for closure are based upon the closure methods used to enable these containers to pass United Nation's test requirements as outlined by the U.N. markings on the package. Any containers used for the packaging of hazardous materials should be inspected prior to filling and shipment. Containers with obvious damage or deterioration should not be filled or shipped.

**U.S. DOT/PHMSA/OHME/CE
REPORT NUMBER: 053-1066
EXHIBIT NUMBER: 13
PAGE 1 OF 2**

CLOSURE INSTRUCTIONS FOR TIGHT-HEAD STEEL DRUMS

You have purchased tight-head steel drums used for shipping hazardous materials. Per Department of Transportation Regulations, we are supplying you with closure instructions. Refer to C.F.R. PART 178.2 (c) (1). Please note that, as delivered, the closures are not tightened for shipment. It is the customer's responsibility to forward these instructions to appropriate personnel.

1. First become visually familiar with the container.
2. A tight-head drum is basically two main parts: The drum itself and the bungs that are used to close the container. The bungs are located at the "top" side of the container. Each bung should be fitted with an appropriate gasket.
3. You will need a proper wrench to close a tight-head steel drum.

STARTING THE CLOSURE PROCEDURE

1. Start closure procedure by setting the drum upright, with the bung openings being at the top side of the drum.
2. Make sure gaskets are still in place on the bungs.
3. Make sure all bungs are in the appropriate sized flanges, and hand tightened to insure no cross threading.
4. Using proper wrench, tighten all bungs to the appropriate torques. See chart for torques.
5. Apply cap seals if necessary

WHEN TESTED, THESE CLOSURES HAD THE FOLLOWING TORQUE SPECIFICATIONS:

Tri-Sure - Steel	Rubber - Black Buna EPDM, Butyl White Neoprene Viton, and Silicone	12 Ft lbs	20 Ft lbs
Tri-Sure Polyethylene	Polyethylene. Irradiated Polyethylene, and Teflon	20 Ft lbs	30 Ft lbs
Polypropylene, Nylon	Rubber. Black Buna White Buna EPDM, Butyl White Neoprene, Viton Silicone	12 Ft lbs	20 Ft lbs
Tri-Sure Polyethylene	Polyethylene Irradiated Polyethylene and Teflon	8 Ft lbs	30 Ft lbs
Tri-Sure Polypropylene	None (Self Gasketing)	5 Ft lbs	12 Ft lbs
(Poly Clad)	None (Self Gasketing)	5 Ft lbs	12 Ft lbs
Ricke - Steel	Rubber - Black Buna White Buna EPDM Butyl Black Visecar White Visecar White Dapon White EPT Black EPT	15 Ft lbs	30 Ft lbs
Ricke - Polyethylene	Poly Seal (Plastic) - Irradiated and Non-Irradiated	20 Ft lbs	40 Ft lbs
Polypropylene, Nylon	Rubber - White Buna Black EPDM White EPDM Dapon Irradiated and Non Irradiated.	9 Ft lbs	20 Ft lbs
Ricke - Polyethylene	None (Self Gasketing)	9 Ft lbs	20 Ft lbs
Polypropylene, Nylon			

Under DOT regulations, any changes made to the type and dimensions of closures, or the method of closure, may constitute a change in the design type of this packaging, voiding the verification we have marked on it and requiring retesting and recertification.

U.S. DOT/PHMSA/OHME/CE
REPORT NUMBER: 05311066
EXHIBIT NUMBER: 13
PAGE 2 OF 2

PHOTOGRAPHIC EXHIBIT

Location: Four Seasons Paint Manufacturing
Lincoln, NE

Photographer: Castellanos, Lupe



USDOT / RSPA / OHME

Exhibit No: 14

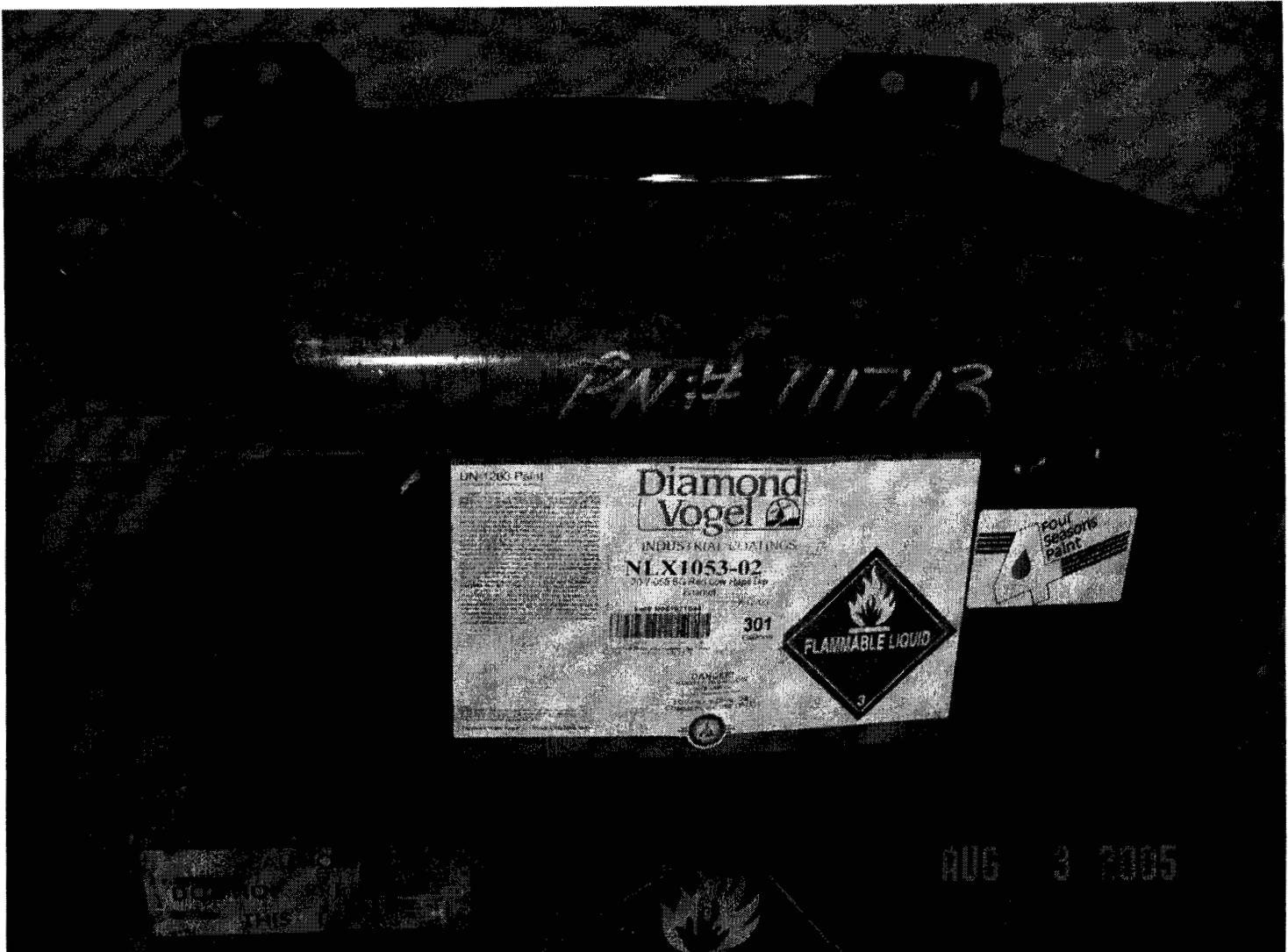
Report No.: 05431066

Page 1 of 1

PHOTOGRAPHIC EXHIBIT

Location: Four Seasons Paint Manufacturing
Lincoln, NE

Photographer: Castellanos, Lupe



USDOT / RSPA / OHME

Exhibit No: 15

Report No.: 05431066

Page 1 of 1

PHOTOGRAPHIC EXHIBIT

Location: Four Seasons Paint Manufacturing
Lincoln, NE

Photographer: Castellanos, Lupe



USDOT / RSPA / OHME

Exhibit No: 16

Report No.: 05431066

Page 1 of 1

Four Seasons

Attendance Registration

The following Hazmat Employees (as defined in 49CFR171.8) have been given DOT Hazardous Material Training:

Instructor's Name: TOM LASWELL

Four Seasons Plant
Location: Lincoln

Date: 4/6/05

PRINT NAME

SIGNATURE

GREGG CHAMPOUR

Arge Champoux

Becky French

Beck's Trench

MIKE PRIMROSE

Diagnosis

Derek Sandling

August 2, 1911

Kevin Jurgens

Kupri P. Kuzma

Charles Idiguma

James A. D.

ALBERT ROSENBOHM

Albert Rosenbloom

HAROLD WOLFENBARGER

Hand Walenbarges

Chris Sherman

Kevin Parker

K₂ PO₄

John Varga

John Varga

Tom Farrell TOM
211104

Tom, Sarah

DOT Hazardous Materials Shipping Training Review

Date: _____

Name: _____

1. Who is required to be trained in the DOT requirements for shipping hazardous materials?
 - a. Anyone who is involved in shipping
 - b. Anyone who drives a delivery vehicle
 - c. Any one who offers or accepts a hazardous material for transportation in commerce
2. What is the DOT definition of a hazardous material?
 - a. Is capable of posing an unreasonable risk to health, safety and property when transported.
 - b. Contains chemicals that can harm someone
 - c. Chemicals that are not packaged by their standard
3. In the Hazardous Materials Table (HMT), proper names are printed in:
 - a. Italics
 - b. Roman characters
 - c. All capitol letters
4. Some terms may be interchangeable such as poison, poisonous, toxic.
 - a. True
 - b. False
5. N. O. I. In the HMT stands for:
 - a. Not on sheet
 - b. Not otherwise specified
 - c. No other substance
6. What term must appear before the proper name of a hazardous material when it is shipped as a waste?
 - a. Caution
 - b. Warning
 - c. Waste
7. Exceptions as listed in column 8a of the HMT apply to all shippers.
 - a. True
 - b. False
8. Batteries containing acid are Class 8 materials. Class 8 materials are:
 - a. Corrosives
 - b. Explosives
 - c. Flammable solids

U.S. DOT/PHMSA/OHME/CE
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EXHIBIT NUMBER: 17
PAGE 2 OF 18

**DOT Hazardous Materials Shipping
Training Review**

9. Packing groups identify products by their level of danger. Packing group I indicates:
- a. Great danger
 - b. Medium danger
 - c. Minor danger
10. Labels are required on most hazardous materials packages. Labels are to be placed:
- a. Above the marking information
 - b. In such a way as to not obstruct marking
 - c. Below the marking information
11. Placards are signs placed on shipping containers, unit load devices and transport vehicles. Placards must be displayed on:
- a. Opposing sides of the trailer
 - b. All 4 sides of the trailer
 - c. Both ends of the trailer
12. The shipper is responsible to insure that the carrier is displaying appropriate placards in a trailer into which the shipper loads hazard materials.
- a. True
 - b. False
13. Standard bills-of-ladings, hazardous materials declarations, or custom shipping forms are all acceptable forms for shipping hazardous materials?
- a. True
 - b. False
14. When shipped with non-hazardous product, hazardous materials must appear first on shipping documents or:
- a. At the bottom of the document
 - b. Be printed in a distinct color (i.e. RED) so they stand out.
 - c. Hazardous materials cannot be shipped on the same bill as other items
15. Shipping papers must include the Shipping name, Identification number, Hazard class, Packing group, the shipper's phone number and:
- a. Gross mass of the material
 - b. Dimensions of the shipping container
 - c. A statement that the shipment meets the shipping requirements of the DOT with the signature of the shipper.

SL721013 Hazardous Materials Table

(1) Symbol	(2) Hazardous material descriptions and proper shipping names	(3) Hazard class or Division	(4) Identification numbers	(5) PG	(6) Label codes	(7) Special provisions	(8) Packaging (173...)			(9) Quantity limitations		(10) Storage	
							Exceptions	Non bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Oxidizing solid, toxic, n.o.s.	5.1	UN3087	I	5.1, 6.1		None	211	242	1 kg	15 kg	D	56, 58, 69, 95, 106
				II	5.1, 6.1		None	212	242	5 kg	25 kg	B	56, 58, 69, 95, 106
				III	5.1, 6.1 *		152	213	240	25 kg	100 kg	B	56, 58, 69, 95, 106
	Oxidizing solid, water-reactive, n.o.s.	5.1	UN3121		5.1, 4.3		None	214	214	Forbidden	Forbidden		
	Oxygen and carbon dioxide mixtures, see Carbon dioxide and oxygen mixtures												
	Oxygen, compressed	2.2	UN1072		2.2, 5.1		306	302	314, 315	75 kg	150 kg	A	
	Oxygen difluoride	2.3	UN2190		2.3, 5.1, 8	1	None	304	None	Forbidden	Forbidden	D	13, 40, 89, 90
	Oxygen, mixtures with rare gases, see Rare gases and oxygen mixtures												
	Oxygen, refrigerated liquid (cryogenic liquid)	2.2	UN1073		2.2, 5.1		320	316	318	Forbidden	Forbidden	D	
	Paint including paint, lacquer, enamel, stain, shellac solutions, varnish, polish, liquid filler, and liquid lacquer base	3	UN1263	II	3	B52, T7, T30	150	173	242	5L	60L	B	
				III	3	B1, B52, T7, T30	150	173	242	60L	220L	A	
	Paint or Paint related material	8	UN3066	II	8	B2, N71, T14	154	202	242	1L	30L	A	
				III	8	B52, N71, T7	154	203	241	5L	60L	A	
	Paint related material including paint thinning, drying, removing, or reducing compound	3	UN1263	II	3	B52, T7, T30	150	173	242	5L	60L	B	
				III	3	B1, B52, T7, T30	150	173	242	60L	220L	A	
	Paper, unsaturated oil treated incompletely dried (including carbon paper)	4.2	UN1379	III	4.2	B101, B106	None	213	241	Forbidden	Forbidden	A	
	Paraformaldehyde	4.1	UN2213	III	4.1	A1	151	213	240	25 kg	100 kg	A	
	Paraldehyde	3	UN1264	III	3	B1, T1	150	203	242	60L	220L	A	
	Paranitroaniline, solid, see Nitroanilines etc.												
D	Parathion	6.1	NA2783	I	6.1	T42	None	201	243	Forbidden	1L	A	40
				II	6.1	T14	None	202	243	Forbidden	5L	A	40
D	Parathion and compressed gas mixture	2.3	NA1967		2.3	3	None	334	245	Forbidden	Forbidden	E	40
	Paris green, solid, see Copper acetoarsenite												
A, W	PCB, see Polychlorinated biphenyls												
+	Pentaborane	4.2	UN1380	I	4.2, 6.1	1	None	205	245	Forbidden	Forbidden	D	
	Pentachloroethane	6.1	UN1669	II	6.1	T14	None	202	243	5L	60L	A	40
	Pentachlorophenol	6.1	UN3155	II	6.1		None	212	242	25 kg	100 kg	A	
	Pentaerythrite tetranitrate (dry)	Forbidden											
	Pentaerythrite tetranitrate or Pentaerythritol tetranitrate or PETN, with not less than 7 percent wax by mass	1.1D	UN0411	II	1.1D		None	62	None	Forbidden	Forbidden	B	1E, SE
	Pentaerythrite tetranitrate, wetted or Pentaerythritol tetranitrate, wetted, or PETN, wetted with not less than 25 percent water, by mass, or Pentaerythrite tetranitrate, or Pentaerythritol tetranitrate or PETN, desensitized with not less than 15 percent phlegmatizer by mass	1.1D	UN0150	II	1.1D		None	62	None	Forbidden	Forbidden	B	1E, SE
	Pentaerythritol tetranitrate, see Pentaerythrite tetranitrate, etc.												
	Pentafluoroethane	2.2	UN3220		2.2		306	304	314, 315	75 kg	150 kg	A	
	Pentamethylheptane	3	UN2286	III	3	B1, T1	150	203	242	60L	220L	A	
	Pentan-2,4-dione	3	UN2310	III	3	B1, T1	150	203	242	60L	220L	A	
	Pentanes	3	UN1265	I	3	T20	150	201	243	1L	30L	E	
				II	3	T20	150	202	242	5L	60L	E	
	Pentanitroaniline (dry)	Forbidden											
	1-Pentol	8	UN2705	II	8	B2, T8	154	202	242	1L	30L	B	38
	Pentolite, dry or wetted with less than 15 percent water, by mass	1.1D	UN0151	II	1.1D		None	62	None	Forbidden	Forbidden	B	1E, SE
	Percarbonates, inorganic, n.o.s.	5.1	UN3217	II	5.1		152	213	240	25 kg	100 kg	A	13
	Perchlorates, inorganic, aqueous solution, n.o.s.	5.1	UN3211	II	5.1	T8	152	202	242	1L	5L	B	46, 56, 58

U.S. DOT/PHMSA/OHME/CE
REPORT NUMBER: 05341066
EXHIBIT NUMBER: 17⁴³
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Chapter of National Safety Council
Your Safety & Health Leader

HAZARDOUS MATERIALS SHIPPING

CFR 49
100 TO 177



Introduction

The prevention of accidental releases of hazardous materials requires a respect of the potential hazards and a commitment to safe work procedures.

Every person involved in the shipment of hazardous materials plays an important role in ensuring its safe transportation.



Hazardous Materials Regulations

To prevent incidents related to the transportation of hazardous materials from occurring.

The Department of Transportation issued HM-126F. Its purpose is to increase awareness of safety and regulatory requirements through training.



HAZMAT TRAINING WHY?

- Training on proper shipping procedures
- To insure safe transport of hazardous materials
- To insure compliance with DOT shipping criteria



HAZMAT TRAINING WHO?

- "Any one who offers or accepts a hazardous material for transportation in commerce"
- Anyone who has an influence on the shipping or handling of hazardous substances



Hazardous Materials Regulations

In the United States, regulations for hazardous materials are mostly issued under three regulatory agencies:

Occupational Safety and Health Administration (OSHA)
Environmental Protection Agency (EPA)
Department of Transportation (DOT)



Hazardous Materials Regulations

The DOT regulates hazardous materials during domestic transportation.



Hazardous Materials Regulations

So why is compliance with the regulations important?



Hazardous Materials Regulations

First, it's the law. You can be held responsible and receive fines for not complying.

Civil fines for violating U.S. DOT regulations can range up to \$32,500 per day in transit and not less than \$275/violation.

Criminal penalties for deliberately violating U.S. DOT regulations can also include fines and imprisonment.



Hazardous Materials Regulations

But more important, it's the safest way to ship hazardous materials and the most effective way to communicate the potential hazards of materials.



Hazardous Materials Regulations

That's why it is **EVERYONE'S RESPONSIBILITY** to comply with the regulations, respect the potential hazards, and follow safe work practices.



What is a Hazardous Material?

- *Is capable of posing unreasonable risk to health, safety, and property when transported*
- Has been designated HM by Sec. Of Trans.
- Meets one or more of the hazardous class or division criteria in part 173



Terms to Understand

- Proper Shipping Name
- Identification Number
- Marking
- Placarding
- Limited Quantity
- Shipping Paper
- Hazard Class
- Packing Group
- Labeling
- Overpacks
- Consumer Commodity
- Materials of Trade



Hazardous Materials Table - HMT

- 10 Columns
- Column 1:
 - + = Fixes Proper Name
 - A = Regulated for Air
 - D = Proper Name Domestic
 - I = Proper Name Int'l.
 - W = Regulated for Water



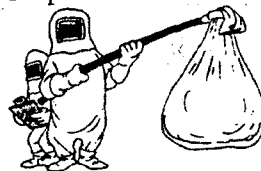
Hazardous Materials Table - HMT

- Column 2 = Proper Name
 - Roman vs. *Italic*
- Some Words can be interchanged
 - *Poison* = *Toxic* = *Poisonous*
 - *n.o.s.* = *noi* = *noibn*
 - *Not Otherwise Specified*



Hazardous Materials Table - HMT

- If material is a Hazardous Waste
 - "Waste" must appear before the name unless part of the Proper Name



Hazardous Materials Table - HMT

- Column 3 Hazard Class or Division
- Column 4 ID Number (includes UN)
- Column 5 Packing Group
 - (No packing Groups for Classes 2, 7 & 6.2)



Hazardous Material Must Be Described in This Order

- Shipping name
- Hazard class
- Identification number
- Packaging group



Hazardous Materials Table - HMT

- Column 6 Labeling Requirements
- Column 7 Special Provisions
 - A = Aircraft
 - B = Bulk
 - H = Highway
 - N = Non Bulk
 - R = Rail
 - T = Intermodal Portable Tanks
 - W = Water



Hazardous Materials Table - HMT

- Column 8 Packaging Authorizations in Section 173
 - 8a = Exceptions
 - 8b = Non Bulk Packaging
 - 8c = Bulk Packaging
- Column 9 Quantity Limitations for Aircraft Type
- Column 10 Vessel Stowage Requirements

GENERAL AWARENESS



DOT characterizes a hazardous material by:

- Hazardous material description
- Shipping name
- Identification number
- Hazard class
- Packaging group



DOT Hazardous Materials Classes

- | | |
|--------------------------------|--|
| ➤ Class 1 Explosives | ➤ Class 6 Poisonous & Infectious Materials |
| ➤ Class 2 Gasses | |
| ➤ Class 3 Flammable Liquids | ➤ Class 7 Radioactive |
| ➤ Class 4 Solids | ➤ Class 8 <i>Corrosive</i> |
| ➤ Class 5 Combustible Material | ➤ Class 9 Misc.. |



Hazardous Materials Packaging Groups

- Determined by degree of DANGER
 - Packing Group I Great Danger
 - Packing Group II Medium Danger
 - Packing Group III Minor Danger



Paint

- > Hazardous material description
 - > Paint including paint, lacquer, enamel, stain, shellac solutions, varnish, polish, liquid filler, and liquid lacquer base.
- > Shipping name
 - > Paint
- > ID number
 - > UN1263
- > Hazard class
 - > Class 3 (Flammable liquid)
- > Packaging group
 - > Group II



Packaging Requirements for Paint

- > 8a - Exceptions = 150
- > 8b - Non-Bulk Packaging = 173
- > 8c - Bulk Packaging = 242



Marking Requirements for Paint

- > DOT Label (Flammable Liquid)
- > package orientation arrows on both vertical sides of the package, pointing in the correct upward direction; and
- > name and address of receiver



Xylenes

- > Hazardous material description
 - > Xylenes
- > Shipping name
 - > Xylenes
- > ID number
 - > UN1307
- > Hazard class
 - > Class 3 (Flammable Liquids)
- > Packaging group
 - > Group II



Packaging Requirements for Batteries, wet, filled with Acid

- > 8a - Exceptions = 150
- > 8b - Non-Bulk Packaging = 202
- > 8c - Bulk Packaging = 242



Marking Requirements for Batteries, wet, filled with Acid

- > DOT Label (Flammable Liquids)
- > package orientation arrows on both vertical sides of the package, pointing in the correct upward direction; and
- > name and address of receiver



Exception vs. Exemption

> Exception

> Normally regulated Hazardous Material that is in a form (packaged) that limits its hazards

> *Set by DOT for all users*

> Exemption

> Shipper has applied to DOT for special permission to have a hazardous material excluded from marking requirements

> Assigned a specific exemption number



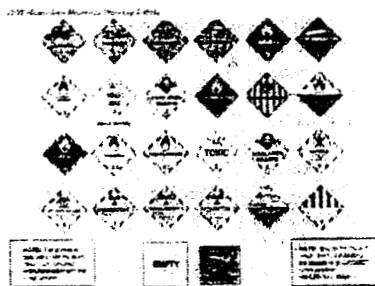
Labeling Requirements

> Most hazardous materials require labels pictorially identifying the hazard associated with the material

> Labeling requirements are found in Column 6 of the HMT



DOT Labels



Placarding



> Signs placed on the outside of a freight container, unit load device, transport vehicle or railcar to pictorially identify the hazardous material(s) being transported.



Placarding Requirements

> Loads containing more than 1000 lbs.. (454 kg) of hazardous material(s)

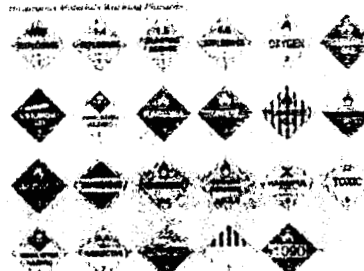
> *Must be placed on each side of vehicle, freight container or load device*

> If two or more categories of hazardous materials are being transported a "Dangerous" placard must also be used

> *Placards must not be applied if hazardous materials are not being transported*



Placarding Examples





Shipping Papers

Regulations require notification that hazardous materials are being shipped by designating so on the documentation.

Also known as, "bills of lading" or "hazardous materials declaration".



Shipping Papers

No Standardized Format

Any form can be used



Shipping papers must include the following and be kept with the materials while being shipped:

- shipping name;
- hazard class or division;
- identification number;
- packing group;
- total quantity (abbreviations may be used);
- exemption notation (if any), and
- a certification that the materials meet all HazMat requirements.



Shipping Papers

- If mixed load, hazardous materials must be listed first or printed in red or otherwise distinguished from non-hazardous materials
- Must also have an emergency number available for emergency response
- Last entry certifies that materials are shipped according to HMR



Reporting

- Immediate notification to DOT is required if there is a *major accident or incident* involving a hazardous material.
- There may be additional state law reporting requirements regarding accidents or spills



Reporting is required if any of the following happen as a result of the hazardous material:

- a person is killed
- a person receives injuries requiring hospitalization
- property damage exceeds \$50,000
- an evacuation of the general public lasting one or more hours
- one or more transportation arteries/facilities shut down for one or more hours
- flight pattern or routine of aircraft is altered
- does not meet any of above, but carrier feels the incident should be reported



Notice must be given at the earliest practical moment and must contain:

- name of reporter
- company name
- phone number where the reporter can be contacted
- date, time and location of the incident
- extent of injuries, if any



- classification, name, and quantity of the hazardous material involved
- the type of incident and nature of the hazardous material involved, and whether a continuing danger may exist at the scene.



- If notification by phone occurs because an incident is *major*, a written report must also be sent to DOT within 30 days of the occurrence.

JOB SPECIFIC TRAINING



HazMat regulations as it relates to:

- Part I: Pre-packaging tasks
- Part II: Packaging tasks
- Part III: Shipping tasks

How relevant each training section is, depends on individual job function.



Part I: Pre-packaging "Paint"

- Look up packaging requirements in column 8 of the HMT
- 8a lists exceptions. 173.150
- 8b lists reference for non-bulk packaging. 173.172
- 8c lists references for bulk packaging. 242



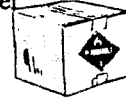
Part II: Packaging requirements:

- Every UN standard packaging must be marked with
 - the appropriate United Nations certification mark which contains the ID code letters and numbers preceded by the UN symbol, e.g. UN4C1 or UN4G
 - A letter to indicate the PG performance level
 - A number designating the specific gravity or max gross mass of the tested packaging design



Package marking requirements:

- Colors of markings contrast with the color of the box, un-obscured, not hidden by labels or attachments and located away from advertising
- Must have proper shipping name & ID number with UN
- Must have appropriate DOT Label
- Must be durable, in English,



Box marking visibility requirements on overpacks:

- at least one box markings must be visible through shrink wrap on two of the sides of the overpack
- if box markings can not be seen after wrapping pallet, treat overpack as a box itself and mark as such:
 - "Consumer Commodity" on one side followed by "ORM-D" within a rectangular box and orientation arrows on two sides of box (overpack)



Part III: Shipping Tasks

- Check condition of packaging
- Check that markings on box are correct



Loading & Unloading Requirements:

- Do not smoke
- Keep fire away
- Do not use tools or equipment on packages that could damage them
- The tractor/trailer engine must be off and the hand brake set
- Secure packages against movement common during transportation



Materials of Trade §173.6

- A Material of trade (§171.8) is a hazardous material that is carried on a motor vehicle:
 - For the purpose of protecting the health and safety of the motor vehicle operator or passengers (such as insect repellent or self-contained breathing apparatus);
 - For the purpose of supporting the operation or maintenance of a motor vehicle, including its auxiliary equipment (such as a spare battery or engine starting fluid); or
 - By a private motor carrier (including vehicles operated by a rail carrier) in direct support of a principal business that is other than transportation by motor vehicle (such as lawn care, plumbing, welding, or farm operations).



A material of trade is limited to:

- > A Class 3, 8, 9, Division 4.1, 5.1, 5.2, 6.1, or ORM-D material contained in a packaging having a gross mass or capacity not over—
 - > 0.5 kg (1 lb) or 0.5 L (1 pt) for Packing Group I material,
 - > kg (66 lb) or 30 L (8 gal) for a Packing Group II, III, or ORM-D material,
 - > 1500 L (400 gal) for a diluted mixture, not to exceed 2 percent concentration, of a Class 9 material;
 - > A Division 2.1 or 2.2 material in a cylinder with a gross weight not over 100 kg (220 lb);
 - > A non-liquefied Division 2.2 material with no subsidiary hazard in a permanently mounted tank manufactured to ASME standards at not more than 70 gallons water capacity; or
 - > A Division 4.3 material in Packing Group II or III contained in a packaging having a gross capacity not exceeding 30 ml (1 oz).



Materials of Trade §173.6

- > The gross weight of all materials of trade on a motor vehicle may not exceed 200 kg (440 lb),
- > not including a permanently mounted tank (1500 L or less) of diluted Class 9 material, as mentioned above.



HazMat Shipping and UPS

All hazardous materials must be prepared in accordance with the appropriate federal Hazardous Materials Regulations (HMR). These regulations can be found in Title 49 of the Code of Federal Regulations (49 CFR).*

As a UPS hazardous materials contract customer, you must comply not only with 49 CFR but also with UPS carrier variations for domestic air and ground hazardous materials shipments.



Domestic Shipping Documentation for UPS

All UPS packages require proper documentation for shipment.

UPS has developed a family of UPS OnLine® Solutions shipping systems that automatically creates necessary documentation for your domestic shipments.

With an automated shipping system, you can:

- > Save time preparing your shipments
- > Store all your shipping information electronically
- > Reduce typos and other errors
- > Print professional-looking labels
- > Track packages quickly
- > Manage your address book to ship to frequently used addresses
- > Generate shipping activity reports



Domestic Air Services

- > Your domestic shipments using air services require that you use a label printed from an automated shipping system or a UPS Air Shipping Document (ASD).
- > The ASD combines your address label, tracking label, and shipping record into one form.

Specific ASDs are available for:

- > UPS Next Day Air Early A.M.®
- > UPS Next Day Air® (can be used for UPS Worldwide ExpressSM)
- > UPS Next Day Air Saver®
- > UPS 2nd Day Air A.M.®
- > UPS 2nd Day Air®

You can order ASDs online in the Supplies area and you'll find detailed preparation instructions on the reverse side of each ASD to help you complete the form correctly.



UPS Ground

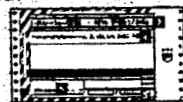
- > Your UPS Ground shipments require that an address label containing "to" and "from" information is included inside and attached to the outside of your package.
- > For guaranteed service, also attach a Ground tracking label.





UPS Shipping Papers

➤ Whether you are shipping by ground or by air, shipping papers must accompany each hazardous materials package. Use the UPS multipart shipping paper for both modes of transport. UPS requires this document to be computer generated.



The following information must appear as indicated.

1. The 24-hour emergency telephone number (when required) §172.604.
2. The consignee name, city and state; or the package tracking number; or a reference number that refers back to the consignee. (This field may be handwritten.)
3. Your UPS shipper number.
4. The basic description including the DOT required information in sequence separated by commas, semicolons, or multiple spaces:

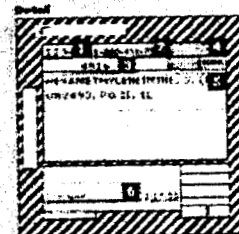


The following information must appear as indicated.

5. When preparing an air shipment, "X" through the "Cargo Aircraft Only" box to confirm the package conforms to the passenger aircraft provision in 49 CFR. When preparing a ground shipment, "X" through both "Cargo Aircraft Only" and "Passenger Aircraft". (This must be done mechanically by the computer.)
6. Sign and date the shipping paper. (This field can be handwritten or computer generated.)



Completed Form



HAZMAT SAFETY TRAINING



You will learn:

- Safety information relating hazardous substances
- Protecting yourself from hazards
- How to respond to emergencies

Safety Information

(found on MSDS)



General Information

- Manufacturer's information
- Emergency telephone number
- Information telephone number
- Date prepared



Hazardous Ingredients Identity Information

- Hazardous components (i.e. Sulfuric Acid)
- OSHA - PEL
- ACGIH - TLV



Physical/Chemical Characteristics

- Boiling point
- Vapor density
- pH of concentrate
- Solubility in water
- Appearance & Odor



Reactivity Data

- Stable/Unstable
- Condition to avoid
- Incompatibility
- Hazardous decomposition or byproducts
- Hazardous Polymerization

Protecting Yourself

Security Plan Review – 49 CFR Subpart I § 172.800

The owner or operators must complete a review and evaluation of the Security Plan at least once every year. Evidence of these reviews shall be recorded in the plan.

Signature

Tom Jarwell

Date

4-6-2005

Management approval 49 CFR Subpart I § 172.800

The Security Plan is fully approved by the management of Four Seasons Paint Mfg. and has been implemented as described

Tom Jarwell
Facility Manager


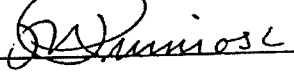
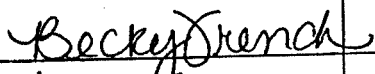

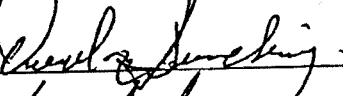
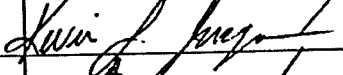
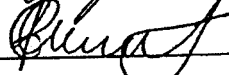
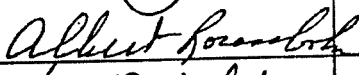
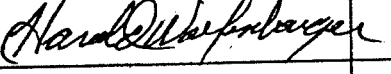
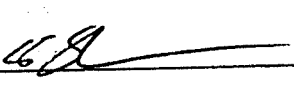
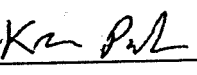
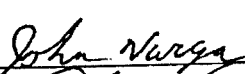
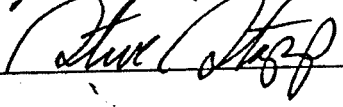
4/6/05
Date

U.S. DOT/PHMSA/OHME/CE
REPORT NUMBER: 05311066
EXHIBIT NUMBER: 17⁴³
PAGE 17 OF 18

attn: Randy Ritsema.

APPENDIX C

Location Four Seasons Plant
Lincoln NE.

Date	Name	Signature	Trainer
4/6/05	TOM LASWELL		TOM LASWELL
4/6/05	MIKE PRIMROSE		"
4/6/05	Becky French		" "
4/6/05	GREGG CHAMBOUR		" "
4/6/05	Derek Sundberg		" "
4/7/05	Kevin Jurgens		" "
4/7/05	Charles Edgins		" "
4-7-05	ALBERT ROSENBOOM		" "
4-7-05	HAROLD WOTTENBARGER		" "
4-7-05	Chris Sherman		" "
4-7-05	Kenia Parker		" "
4-7-05	John Varga		" "
4/7/05	STEVE STAPP		" "

U.S. DOT/PHMSA/OHME/CE
REPORT NUMBER: 05311066
EXHIBIT NUMBER: 17
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U.S. Department of Transportation
Research & Special Programs Admin
Office of Hazardous Materials Enforcement

ORAL INTERVIEW

Person Conducting Interview: Lupe Castellanos, HMES, 43.1

Place of Interview (City, State): Lincoln, NE

Date: August 3, 2005

Type of Operation: Shipper

Name and Address of Firm: Four Seasons Paint Manufacturing Co.
Lincoln, NE

Answer from Mr. Barga, Laborer and Mr. Champoux, Sales, to a question asked by inspector and Castellanos during the inspection.

- Q. How many totes does Four Seasons own use for hazmat shipments?
- A. Four Seasons has approximately 50 totes with about 1/2 of those in use with hazmat paint products.
- Q. Is this one of the totes Four Seasons has been using this to ship hazardous materials on a regular basis?
- A. Yes, we use this tank to transport the paint.
- Q. Are you aware that the tote has not been retested since August 1992?
- A. No.
- Q. Did you know that totes must be retested every 2.5 years?
- A. No.
- Q. Does anyone at Four Seasons keep track of any of hazardous materials totes by noting the serial numbers and test dates?
- A. No.

U.S. DOT/PHMSA/OHME/CE
REPORT NUMBER: 05~~1~~⁴³1066
EXHIBIT NUMBER: 18
PAGE 1 OF 1

FOUR SEASONS PAINT MFG.

DATE: 8-19-05

COMPANY: US DOT

ATT: Guadalupe Castellanos

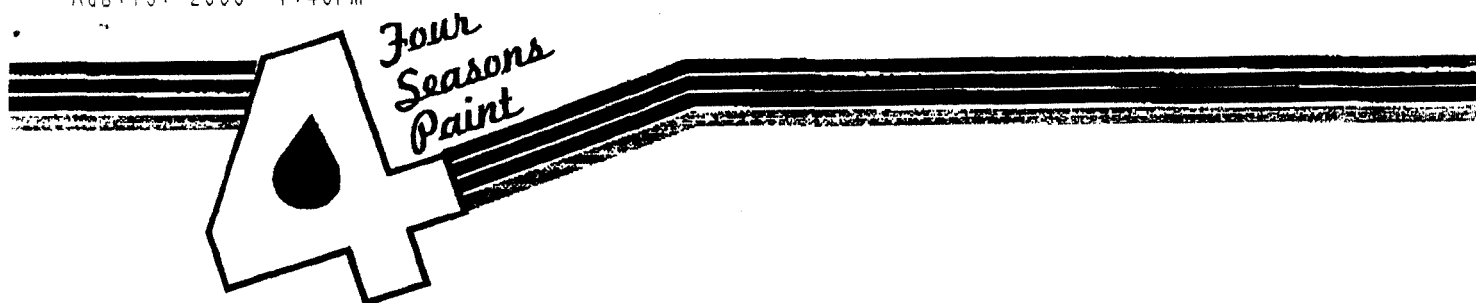
FAX #: (847) 294-8590

FROM: Randy Ritsema

NUMBER OF PAGES TO FOLLOW: 4

COMMENTS: _____

Please notify us if you do not receive all of the pages.



Guadalupe Castellanos
US DOT
2300 E. Devon Ave., Suite 478
Des Plaines, IL 60018

Re: Inspection of Four Seasons Paint Mfg. on 8-3-05

Dear Ms. Castellanos:

We are addressing the "Probable Violations" that were noted from the inspection. Our responses are as follows:

Probable Violation #1

- 173.22 - Failure to close UN Packaging according to Manufacturers closure instructions.
Drums - 1) Not torquing to specs
2) Ring not fitted properly

Our response:

When closing our drums, we follow a process where the first step is to use the air wrench. This tightens the bolt to a certain point, and at that point we use the torque wrench to tighten to spec. The torque wrench has been set to the correct spec, so the employees do not need to reset it each time. The plant manager, Tom Laswell, is responsible for ensuring that the torque wrench is set to the proper specification. He was on vacation the day of the inspection and was not able to help with this information. During the inspection, a drum was observed with the ring not fitted properly, but this drum was not being shipped at the time, and did not need to be closed to spec. When they are shipped, they are closed to the proper torque spec.

Probable Violation #2

- 172.704 - No hazmat training as it relates to function specific training on UN drum and box specification closures.

Our response:

The employees have been shown the proper method of closing the containers. The DOT Hazmat Training that was done had general information about packaging and containers. When employees are hired and job-specific training is done, they are trained on the proper methods to use when using the torque wrench and air wrench to close drums. This is part of the on-the-job training they receive. They know that the torque wrench is set to spec, and they are to use the torque wrench to properly close the drums. Our drums are properly closed when they are shipped.

Probable Violation #3

172.800 - No risk assessment in security plan.

Our response:

This Probable Violation has been eliminated per phone conversation with Guadalupe on 8-17-05.

Probable Violation #4

180.352(b) - Not performing periodic testing on intermediate portable tanks (totes) every 2 ½ years.

Our response:

We have totes in our building, which have been put out-of-service and are not used. The other totes that we have for a couple of customers were purchased within the testing requirement time, and thus, would meet the testing requirement. To make this more clear, we will put stickers on the out-of-service totes to mark them this way. It appears that the totes that were observed were those that were out-of-service.

We have addressed the items in question. We hope that this has given you the information you need.

Sincerely,



Randy Ritsema
Four Seasons Paint Mfg., Regulatory Affairs Specialist

Enclosure: Copy of Exit Briefing showing Probable Violations

AUG. 19. 2005 1:49PM

No. 9726 P. 4

08/04/2005 THU 07:54 FAX 4024703402

FOUR SEASONS PAINT

001



US Department
of Transportation

Pipeline and Hazardous
Materials Safety Administration

Office of Hazardous
Materials Enforcement
Central Region

2300 E. Devon Ave. Suite 478
Des Plaines, Illinois 60018
(847) 294-8580
(847) 294-8590 - Fax

EXIT BRIEFING

(This document is not a final report.)

Date: 8-3-05 Report Control #: _____

Company Name: FOUR SEASONS PAINT Mfg. Co.

Address: 5700 NW 38th St., LINCOLN, NE 68524

NAME OF INDIVIDUALS RECEIVING BRIEFING:

Name: Gregg Champoux Title: Purchasing

Name: _____ Title: _____

Name: _____ Title: _____

This has been a compliance inspection conducted in accordance with Title 49 U.S.C. Section 5121(c). This exit briefing addresses only the areas noted, and it is not a finding of general compliance in any other areas covered by the Hazardous Materials Regulations that were subject to the inspection.

During the course of the inspection the following probable violations of 49 CFR and/or quality control items were noted:

PROBABLE VIOLATIONS:

Section:

Explanation: 173.22

Failure to close UN PACKAGING
ACCORDING TO Manufacturers Closure
instructions.

DRUMS - NOT TORQUING TO SPECS
DRUM NOT FITTED PROPERLY

BOXES - NOT USING PLASTIC TAPE

Section:

Explanation: 172.704

NO HAZMAT TRAINING AS IT RELATES
TO FUNCTION SPECIFIC TRAINING ON
UN DRUM + BOX SPECIFICATION CLOSURES.

U.S. DOT/PHMSA/OHME/CENTRAL REGION

REPORT # _____

EXHIBIT # _____

PAGE _____ OF _____

ATTN: SCOTT HEEMSTRA

Report Control # _____

PROBABLE VIOLATIONS:

Section: _____

Explanation: _____

172.800

NO RISK ASSESSMENT IN SECURITY
PLAN.

Section: _____

Explanation: _____

180.352(b)

NOT PERFORMING PERIODIC TESTING
ON IM PORTABLE TANKS (TOTES) EVERY
2 1/2 YRS.

Section: _____

Explanation: _____

Section: _____

Explanation: _____

Section: _____

Explanation: _____

U.S. DOT/PHMSA/OHME/CENTRAL REGION

REPORT # _____

EXHIBIT # _____

PAGE _____ OF _____